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Legal Protection of Brazilian Consumers in Disputes Arising from Cross-Border Consumer Transactions

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Abstract. This article analyses the development of Brazilian consumer protection in disputes involving cross-border consumer transactions through the lens of private international law in light of the growing impact of economic globalisation, which has encouraged the consumption of foreign goods and services. To achieve this objective, the study employs two methodologies: the dogmatic method, which involves the analysis of relevant norms at the international and domestic levels, and the empirical method, which examines the leading cases and other judicial cases that reflect prevailing jurisprudence on the matter. The article also examines legislative bills and treaty drafts that are aimed at the future regulation of consumer protection at the international level.

Keywords: liability; cross-border consumer transactions; Brazil; consumer law; private international law; cross-border consumer litigation; international consumer relations; globalisation; consumer law as a human right; cross-border consumer contracts.

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Introduction

Cross-border consumer transactions, the disputes arising from them, and the problems they create are relatively recent issues, particularly in Brazil. Hence, both the legislation and the jurisprudence[1] on this matter remain under development.

Accordingly, this work examines recent developments in legal frameworks in Brazil in terms of jurisprudence and regulatory standards for consumer protection, which are aimed towards structuring a legal order capable of protecting the Brazilian consumer in the international environment.

1. Consumer Law as a Human Right

Consumer protection as a universal principle and a fundamental human right was recognised by the Human Rights Commission of the United Nations in its 29th session in 1973, and later formalised by UN Resolution 39/248 in 1985. This resolution outlined general guidelines for consumer protection, intended to help countries in ensuring adequate protection for their populations as consumers. The domestic legislation that was enacted in response aimed to restrain unethical and abusive conduct of suppliers and provide consumers with the resources to enable them to seek redress in cases where their interests were harmed through fast, low-cost, accessible procedures, both formal and informal. The legislation also encouraged states to develop international cooperation and implement the objectives set forth in the resolution.

These guidelines and the consumer protection goals were further expanded by Resolution 1999/7 of the United Nations Economic and Social Council on July 26, 1999. Subsequent conferences were held within the framework of the UN on the subject of consumer protection and other relevant interconnected topics, in particular, those involving fair trade, competition, and world trade.[2]

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[1] Judicial precedents considered collectively or caselaw.

[2] Howells, G., Ramsay, I., & Wilhelmsson, T. (2010). Consumer law in its international dimension. In G. Howells, I. Ramsay, T. Wilhelmsson, & D. Kraft (Eds.), *Handbook of research on international consumer*

On December 22, 2015, the UN General Assembly passed a new Resolution 70/186[3] on consumer protection. This resolution lists the principles and policies to be adopted by states for consumer protection, including key themes of substantial and procedural law, with a primary focus on access to justice and effective redress of harmed consumers. It also outlines measures to be adopted that are designed to foster more equitable relations on the economic and commercial plane between consumers and suppliers. Furthermore, the resolution calls on states to promote and encourage programmes for consumer education and for appropriate access to information so that consumers may acquire a proactive attitude in protecting their interests, including the promotion of sustainable consumption and practices aimed at preserving the environment.[4]

Although Resolution 70/186 comes from the domain of soft law, structurally, it resembles a consumer protection code,[5] and represents a milestone toward cosmopolitan law of consumer protection,[6] which aims to rebalance the consumer relationship legally and economically.

More recently, as of October 18, 2023, Brazil formerly adhered to the International Code for the Protection of Tourists (ICPT) established by the World Tourism Organization.[7]

In Latin America, the development of specific legislation for the protection of consumers, as well as the creation and strengthening of institutions focused on their protection, began in the mid-1970s.[8] Today, nearly all countries in the Americas have enacted specific legislation aimed at safeguarding consumer protection.[9]

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law (pp. 1, 13 ff.). Edward Elgar. This book accurately highlights the importance of the UN Guidelines on Consumer Protection, as well as of other important soft law documents that influence the development of consumer protection in developing countries.

3 United Nations General Assembly. (2015, December 22). *Consumer protection*. United Nations Conference on Trade and Development. http://unctad.org/meetings/en/SessionalDocuments/ares70d186_en.pdf

4 United Nations Sustainable Development. (n.d.). *Goal 12 "Ensure sustainable consumption and production patterns."* https://sdgs.un.org/goals/goal12

5 *Cf.* preface of UNCTAD publication, United Nations Conference on Trade and Development. (2016). *Guidelines for consumer protection*. http://unctad.org/en/PublicationsLibrary/ditccplpmisc2016d1_en.pdf

6 Klausner, E. A. (2012). *Direito Internacional do Consumidor: a proteção do consumidor no livre-comércio internacional.* Juruá. (In Portuguese), proposes a Cosmopolitan Law for consumer protection.

7 *Cf*. World Tourism Organization. (n.d.). *Adherence to the International Code for the Protection of Tourists and subsequent steps*. https://www.unwto.org/adherence-to-the-international-code-for-the-protection-of-tourists

8 Arrighi, J. M. (2001). Capítulo VII – Comercio internacional y protección del consumidor. In G. Stiglitz (Ed.), *Defensa de los consumidores de productos y servicios: Daños – contratos* (p. 370). La Rocca. (In Spanish).

9 For further information on the evolution of the theme in the History and Science of Law, *see*, Klausner, 2012, pp. 73–106.

In the context of MERCOSUR,[10] the regional economic bloc of which Brazil is a member, the community standards are primarily concerned with the safety and health of consumer. These standards are typically composed of administrative, technical, and phytosanitary measures. The adoption of common regulations to standardise MERCOSUR's consumer protection is planned for the future, along with a treaty on jurisdiction,[11] and an international process specific to consumer relations within the community.[12]

In accordance with MERCOSUR Resolution 126/94,[13] while a broad treaty on consumer law in MERCOSUR is still not in place, member states are required to use their own national legislation on the subject when it comes to products and services marketed in their territory in a non-discriminatory manner. At the same time, there are resolutions and an intention to harmonise the laws of the member states with regard to the minimum legal conceptualisation of the consumer subject to protection by specific legislation, such as those established formally by the MERCOSUR Resolution 34/11.[14]

It should be noted that MERCOSUR member country consumers can take advantage of judicial cooperation agreements and of agreements on standards in force within MERCOSUR which, although not specific to consumer disputes, facilitate international procedural arrangements, for example, the Las Leñas Protocol for cooperation and judicial assistance in civil, commercial, labour, and administrative matters since 1992.

Regarding internal policies of the member states, Brazil had already enacted the precursor of protective consumer legislation, which has been in force since 1991, as will be seen below.

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[10] MERCOSUR is an acronym that stands for Mercado Comun Del Sur (Southern Common Market), comprising Brazil, Argentina, Paraguay, and Uruguay since 1991, and Venezuela since August 12, 2012. Bolivia is in the process of accession to the community. Chile, Peru, Colombia, Ecuador, Guyana, and Suriname are associated states. *Cf*. MERCOSUL. https://www.mercosul.gov.br

[11] The Santa Maria Protocol on International Jurisdiction in Matters of Consumer Relations is not in force. Nonetheless, its provisions are eventually taken into account by the Brazilian courts. *See* the suggestions for the revision of the Protocol of Santa Maria, with the creation of a process from a distance specifically for consumer relations in Klausner, E. A. (2005). Jurisdição internacional em matéria de relações de consumo no Mercosul: sugestões para a reedição do Protocolo de Santa Maria. *Revista de Direito do Consumidor*, *14*(54), 116–142. (In Portuguese). *See* also, Mercosul. Secretaria. Setor de Assessoria Técnica. Consultoria Jurídica. (2004). *Estudo n. 003/2004. Primeiro relatório sobre a aplicação do direito do Mercosul pelos tribunais nacionais e sobre a aplicação do direito nacional por meio dos mecanismos de cooperação jurisdicional internacional do Mercosul* (versão atualizada em 18 October 2004, elaborado pelos Drs. Alejandro Perotti e Deisy Ventura, Montevidéo). (In Portuguese).

[12] Further information on consumer policy in the context of MERCOSUR can be found in Klausner, E. A. (2006b). *Direitos do consumidor no Mercosul e na União Européia: acesso e efetividade* (pp. 66–71, 81–97). Juruá. (In Portuguese).

[13] MERCOSUR. (1994). *Defesa do Consumidor*. https://normas.mercosur.int/simfiles/normativas/29598_RES_126-1994_PT_DefConsumidor.pdf. There is also a Spanish version.

[14] MERCOSUR. (2011). *Defesa do Consumidor – conceitos básicos*. https://normas.mercosur.int/simfiles/normativas/42531_RES_034-2011_PT_Conceitos%20Basicos.pdf. There is also a Spanish version.

The Argentine consumer protection law was enacted in 1993 (Ley 24,240 – *Defensa del consumidor*); the Paraguayan, in 1998 (Ley 1,334/98 *de Defensa del consumidor y del usuário*); and the Uruguayan, in 1999 (Ley 17,189, enacted in 1999, and later the Ley 17,250, in 2000).[15]

The most recent MERCOSUR member state, Venezuela,[16] has also issued special legislation for consumer protection: *Ley de Protección al Consumidor y al Usuario*, No. 4,898 *Extraordinário*, modified in 2004 and 2010, and the *Ley para la Defensa de las Personas en el Acesso a los Bienes y Servicios*, both repealed and replaced with the *Ley Orgánica de Precios Jus*tos and supplementary legislation, such as the *Ley de Tarjetas*.[17]

In the context of BRICS,[18] each founding member state has its own consumer legislation.[19] Russia has the Consumer Protection Act of February 7, 1992*;* India has the Consumer Protection Act since 1986;[20] China, the Law of the People's Republic of China on the Protection Consumer Rights and Interests[21] and the E-Commerce Law of the People's Republic of China of August 31, 2018; and South Africa, the Consumer Protection Act No. 68 of 2008,[22] and Brazil has the Code of Consumer Protection and Defence, Federal Law No. 8,078 of 1990.

The Federative Republic of Brazil Constitution, promulgated as a result of the country's re-democratisation in 1988, inserted consumer protection as a fundamental and human right in Article 5, item XXXII, and also as an economic order principle in Article 170, item V. Furthermore, Article 48 of the Transitional Constitutional Provisions

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15 Brasil. Secretaria Nacional do Consumidor (SENACON). (2013). *Atlas Ibero-Americano de Proteção ao Consumidor* (p. 435). (In Portuguese).

16 Venezuela has been suspended from the community since August 5, 2017 for violating its commitment to maintain democratic order, according to MERCOSUR's webpage. http://www.mercosur.int/innovaportal/v/7823/2/innova.front/paises-del-mercosur

17 Martinez, C. M. (2014). Préstacion de servicios bancários a consumidores y determinación de la jurisdicción: uma mirada desde el sistema venezolano de derecho internacional privado. In J. A. M. Rodriguez & C. L. Marques (Eds.), *Jornadas de la ASADIP 2014: Los servicios en el Derecho Internacional Privado* (pp. 609–610). (In Spanish).

18 "BRICS is a group comprised of eleven countries: Brazil, Russia, India, China, South Africa, Saudi Arabia, Egypt, the United Arab Emirates, Ethiopia, Indonesia, and Iran. It serves as a political and diplomatic coordination forum for countries from the Global South and for coordination in the most diverse áreas." *Cf*. BRICS Brasil. (2025, January 20). *About the BRICS*. https://brics.br/en/about-the-brics

19 Brazil, Russia, India, China, and South Africa were incorporated in 2011. Six new members were admitted in 2024–2025. *Cf*. BRICS Brasil. (2025, January 20). *About the BRICS*. https://brics.br/en/about-the-brics

20 Ostanina, E., & Titova, E. (2020). The protection consumer rights in the digital economic conditions: The experience of the BRICS countries. *BRICS Law Journal, 7*(2), 118, 122–123.

21 Law of the People's Republic of China on the Protection of Consumer Rights and Interests. Asian Legal Information Institute. http://www.asianlii.org/cn/legis/cen/laws/pocrail488/

22 Consumer Protection Act. The National Consumer Commission. https://thencc.org.za/consumer-protection-act/

Act required the National Congress to promulgate a specific law establishing the protection of consumer rights.

The Brazilian Code of Consumer Protection and Defense (*Código de Proteção e Defesa do Consumidor – CDC*), Brazilian Federal Law 8,078 of 1990, was influenced by: Resolution 39/248, of April 9, 1985 from the UN General Assembly; the French *Projet de Code de la Consommation*; the Spanish *Ley General para la Defensa de los Consumidores y Usuários*, 26/1984; the Portuguese Decree-Law 446/85 and Law 29/81; the Mexican *Ley Federal de Protección al Consumidor*, of 1976; the Quebecer (Canada's Province) *Loi sur la Protection du Consommateur*, of 1979; the EU Directives 84/450 and 85/374; the German *Gesetz zur Regelung des Rechts der Allgemeinen Geschaftsbedingungen – AGB Gesetz*, of 1976; and the U.S. Federal Trade Commission Act, Consumer Product Safety Act, Truth in Lending Act, Fair Credit Reporting Act, and Fair Debt Collection Practices Act.[23]

The CDC significantly altered the legal and economic relationship between suppliers and consumers, rebalancing domestic relations between them in favour of the consumer. However, after more than two decades of existence, the CDC's efficiency was challenged by the globalisation of consumer relations,[24] a phenomenon that, particularly in Brazil, was not noticeable when the CDC became law. At that time, international tourism was possible only for a few wealthy people, the personal computer did not exist, and the internet was still predominantly a military project, limited to a small North American network.

Cross-border consumer relationships refer to legal relationships between consumers and suppliers that involve more than one country and, consequently, national legal systems. For example, a situation in which a consumer residing in Brazil establishes a legal relationship with a supplier located abroad or vice versa, or where the execution of the obligation happens entirely, or in part, abroad, or vice versa, meaning that one or more "foreign elements"[25] intersecting two or more different state legal systems are involved.

The fact that the supplier and the consumer are located in different states and, consequently, subject to different legal systems, often leads to a conflict of laws and jurisdictions in the sphere of consumer transactions. Examples of such international or cross-border consumer relations include an electronic contract signed by a consumer residing in Brazil with a supplier based abroad by internet or

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23 Grinover, A. P., Benjamin, A. H. de V., et al. (1999). *Código brasileiro de defesa do consumidor: comentado pelos autores do anteprojeto* (6th ed., pp. 1–10, 910). Forense Universitária. (In Spanish).

24 Klausner, E. A. (2008). O desafio da globalização do consumo nos dezoito anos do Código de Defesa do Consumidor brasileiro. *Fórum: Revista da Associação dos Magistrados do Estado do Rio de Janeiro*, *Ano XX*, *19*. (In Portuguese), coined the term "globalisation of consumer relations" to describe the intense level of cross-border consumer relations carried out in contemporary times.

25 Collins, L., Briggs, A., Harris, J., et al. (Eds.). (2006). *Dicey, Morris and Collins on the conflict of laws: Vol. 1* (14th ed., pp. 1, 3). Sweet & Maxwell.

a product liability accident[26] caused by a defective product manufactured abroad, with the victim residing in Brazil and without a contract with the supplier.

The new Civil Procedure Code, which came into force in March 2016, expressly establishes the international jurisdiction of Brazil in cross-border consumer disputes in which the consumer involved is domiciled or resides in Brazil as described above (Art. 22, II). This expansion of Brazilian jurisdiction is an improvement in consumer protection and represents an important step towards the modernisation of legislation in favour of the consumer, given that the old Civil Procedure Code did not have a similar provision; however, this is not enough.

1.1. Characteristics of Brazilian Consumer Law

Consumer law, as an autonomous legal discipline within the science of law, governs the legal relations between supplier and consumer. Its fundamental and directing principle is the consumer's vulnerability in relation to the supplier.[27] Addressing and overcoming this vulnerability is the primary objective of the new legal discipline and, consequently, of the Consumer Defence Code (CDC) (*see* Art. 4, I).

The need for consumer protection in recognition of consumer vulnerability is the structural and guiding principle of consumer law. Its goal is to achieve material equality between supplier and consumer in the legal consumer relationship by means of legal instruments that neutralise consumer vulnerability. Such instruments may stem from substantive or procedural law, or they may be of an administrative nature.

In Brazil, as well as in several other countries, consumer law is composed of a multi- and inter-disciplinary legal microsystem made up of public and private law standards and governed by inherent philosophical principles. The CDC serves as the centre of this legal system of principles and standards. The CDC's standards are public policy and, therefore, not contingent upon the desire of the recipients, as expressed in Article 1,[28] with consumer protection afforded by mandatory rules.

It is an attribute of consumer law to incorporate into its microsystem, and fill with its principles and philosophy, any standard of the legal system, regardless of the branch of law to which it belongs traditionally, whenever they are applied to a consumer

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[26] A manufacturer's or a seller's tort liability for any damages or injuries suffered by a buyer, user, or bystander as a result of a defective product or service. *Cf.* Garner, B. A. (Ed.). (2006). *Black's law dictionary* (3rd ed., p. 569). Thomson/West.

[27] Donato, M. A. Z. (1994). *Proteção ao consumidor: conceito e extensão* (p. 108). Revista dos Tribunais. (In Portuguese), resolutely states that "the vulnerability of the consumer will be the main reference point of consumer law. All consumers are, fundamentally, vulnerable." In that sense, *see* also, Lorenzetti, R. L. (2003). *Consumidores* (pp. 16–17). Rubinzal – Culzoni. (In Portuguese); Arrighi, 2001, pp. 371–378; and Marques, C. L. (2002). *Contratos no Código de defesa do consumidor: o novo regime das relações contratuais* (4th ed., p. 268). Revista dos Tribunais. (In Portuguese).

[28] As can be found in Marques, C. L., Benjamin, A. H. V., & Bessa, R. L. (2007). *Manual de direito do consumidor* (pp. 40 ff.). Revista dos Tribunais. (In Portuguese).

relationship with the intention of overcoming the weakness of the consumer.[29] In Article 1, the CDC clearly states the purpose of protecting and defending the consumer.[30]

A consumer is any person or entity that acquires or uses goods or services, whether public or private, to meet their personal or family needs – either the needs of their families or their own in the case of individuals – and not trade or professional needs. This concept considers the consumer as the final economic recipient of the good or service (Art. 2, CDC). This type of consumer is included in the finalist interpretation, which does not, for instance, include the purchaser who incorporates the good or service in the productive chain as raw material. On this point, the dominant jurisprudence was established a long time ago, such as in the Superior Court of Justice (STJ)[31] – 4th Panel – Special Appeal (Resp) 218505/MG – Rapporteur: Minister Barros Monteiro – judged on September 9, 1999, as well as the related doctrine.

According to economic science, the person who acquires a product or service as input does not consume but rather invests. The finalist definition for this type of consumer is also adopted in the national legal systems of the countries of MERCOSUR and of Latin America in general, in the European countries, and in the European Community.[32] This is because only that category of economic agents legally regarded as "consumers" is in a weaker position, justifying the special protection that aims to rebalance the legal relationship with the supplier.

It should be emphasised, however, that there are some rulings in Brazilian jurisprudence that expand the definition of a "consumer" to encompass any person who removes a good or service from the market, regardless of its end use or destination and the type of the agent (whether private or professional). Therefore, for the theory cited, the consumer is the actual recipient of the good or service, being the final entity to remove the product from the market. This school of thought is called "maximalist" and currently does not have any significant support in doctrine or in national case law. An example of adherence to this school is the judgement of the Superior Court of Justice (STJ) – 4th Panel – Special Appeal (Resp) 142042/RS – judged on November 11, 1997 – rapporteur: Minister Ruy Rosado de Aguiar.

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29 As can be found, among others, in Nunes, L. A. R. (2004). *Curso de direito do consumidor* (pp. 65–69). Saraiva. (In Portuguese).

30 Cavalieri Filho, S. (2008). *Programa de direito do consumidor* (pp. 12–14). Atlas. (In Portuguese), is the dissonant voice in the consumer doctrine, since he understands that there is no consumer microsystem (he speaks of a "legal mini-system"), but actually a "*multidisciplinary legal supra-structure, supra-law standards*, applicable in all branches of law – public and private, contractual and extra-contractual, material and procedural – where consumer relations take place."

31 Superior Tribunal de Justiça (STJ). (In Portuguese).

32 Galves, C. (1996). *Manual de economia política atual* (14th ed., pp. 21, 47–49, 54, 338, 395). Forense Universitária. (In Portuguese). *Cf.* Lorenzetti, 2003, pp. 78–83; and Klausner, 2012, Ch. 2, "where the legal concept of consumer is analysed in areas of economic integration and in some countries of all continents of the world."

As an exception, in cases of extreme vulnerability of an entrepreneur (particularly the owner of a micro or small business), the doctrine and jurisprudence consider it legitimate to apply consumer law to resolve the issue when the business owner's position is similar to that found among consumers, especially when the businessperson acquires goods and services that are technically "inputs" but not directly related to the business owner's area of expertise. An example of such a case would be a hotel or a hospital that purchases gas to provide its services, has problems with the product, and is treated as a consumer. This school of thought is referred to as "in-depth finalism."[33]

Under the CDC, the definition of "consumer" also covers subjects treated as consumers, such as third-parties, those who are victims of suppliers' activities vis-a-vis the consumer market.

The sole paragraph of Article 2 equates the consumer to "the collective of people, although indefinite, who have intervened in the consumption relations." In turn, Article 17 equates the consumer to all victims of product liability defects or accidents. That is, the consumer legislation protects and equates as a consumer anyone who is a victim of a hazard due to the malfunction of a product or service, regardless of whether they are party to a consumer contract or the user of products or services placed on the consumption market. Article 29, Chapter V, which governs commercial practices, equates consumers to all those, whether they are determinable or not, exposed to the abusive practices set forth in Chapter V and in the next chapter (Chapter VI of the CDC deals with contractual protection).

The concept of "supplier" is addressed in Article 3 and is considered as any person or entity, public or private, national or foreign, including depersonalised entities, that offers a product or professional service in the marketplace with the intent to profit. This list also includes independent professionals (Art. 14, para. 4).

Paragraphs 1 and 2 of Article 3 define "product or service" broadly. Paragraph 1 characterises a "product" as "any property, movable or immovable, material or immaterial." Paragraph 2 conceptualises a "service" as any activity provided in the consumer market in return for remuneration, except for those arising out of an employment contract.[34] The legal definition includes products and services that are also provided free of charge, as they generate economic benefits for the supplier indirectly, particularly when they are offered as part of business marketing strategies.

Thus, one can affirm that the consumer relationship is the legal relationship established between a supplier and a consumer as a result of a contract, the use

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[33] Marques, Benjamin, & Bessa, 2007, p. 71.

[34] The employment contract is between employee and employer, under the aegis of the Labour Law standards, and a relationship of this kind is characterised primarily for purposes of being differentiated from the service contract by a hierarchical subordination of the employee, individual, to the employer that hires the services. In turn, the work done by public servants and their relationship with the public administration is governed by the rules of administrative law.

of goods or services on the market, or the suppliers' non-contractual civil liability, specifically strict product liability towards those equated with "consumers."[35]

At the same time, concerns over effective consumer protection led the legislature to adopt the theory of "enterprise's risk"[36] with regard to civil liability and to create a distinct system of civil liability for flaws and defects of goods or services provided, regardless of fault. The objective liability of the supplier can be solidary[37] or subsidiary, depending on the case, and may extend to all parties responsible for placing the product or service in the market. Under certain circumstances, the consumer protection code permits the piercing of the corporate veil of organisations, especially when such disclosure is essential to protect consumers' rights (Arts. 12 to 14, 18 to 20, and 28). The exceptions to this norm are the independent professionals, whose liability is still subjective as a rule, *ex vi* of Article 14, paragraph 4 of the CDC.

Also worth noting in the CDC is the existence of a list of basic consumer principles and rights in conjunction with instruments for their implementation. It establishes detailed provisions on marketing and for contracting, aimed at avoiding unfair commercial practices and contracts with unfair terms. Furthermore, it organises a specific criminal and administrative sanctions system and includes civil procedural rules that simplify consumer access to justice and consumer protection in court.

Nonetheless, for certain disputes involving cross-border transactions, the CDC does not provide for a specific procedural law that would provide consumers with the means to effectively seek redress for a violated right.[38]

The CDC has established the objective liability (or strict product liability) of suppliers, including those located abroad, for any damages caused to consumers from providing defective products or services. Accordingly, foreign suppliers have the duty to indemnify consumers for any harm or damage resulting from that product or service (also referred to by the doctrine as a product liability accident), as set out in

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35 *Cf.* Cavalieri Filho, S. (2003). *Programa de responsabilidade civil* (4th ed., p. 492). Malheiros. (In Portuguese).

36 Cavalieri Filho, 2003, p. 240. Placing the risk on the producer, even in the absence of fault, has been justified on the basis that the producer is involved in a profit-making venture and should be responsible for damage resulting therefrom. About rationales for strict liability, *see*, Howells, G., & Weatherill, S. (2005). *Consumer protection law* (2nd ed., p. 223). Ashgate.

37 "*solidary* ... (of a liability or obligation) joint and several." "*solidarity*. The state of being jointly and severally liable (as for a debt)." "*Joint and several*. *adj.* (Of liability, responsibility, etc.) apportionable at an adversary's discretion either among two or more parties or to only one or a few select members of the group, together and in separation." "*Joint and several liability*. Liability that may be apportioned either among two or more parties or to only one or a few selected members of the group, at the adversary's discretion." Garner, 2006, pp. 664, 383 and 426.

38 As, Arroyo, D. P. F. (2010). La protection des consommateurs dans les relations privées internationales. In D. P. F. Arroyo (Ed.), *Consumer protection in international private relationships* (pp. 703, 704). CEDEP, skilfully points out, a lack of adaptation of the general rules is evident in terms of consumer law and international contracts, which calls for the development of specific rules for international consumer relations.

Articles 3 and 12. However, these two articles, while applicable to the foreign supplier, do not necessarily settle all issues involving cross-border consumer relationships, as they are rules of substantive law intended for consumer relations established in Brazil and thus constrained by the territorial limits of national legislation.

In cases of private law obligations, the LINDB[39] determines, as a standard of public order (public policy or *lois de police*) in Article 9, that to effectively qualify and conduct obligations, the laws of the country in which they were constituted should be applied. Paragraph 2° of Article 9 determines that the obligation arising from the contract shall be deemed at the place of residence of the offeror. The rules of Brazilian private international law do not provide any specific provisions for consumer contracts or for cross-border consumer transactions in general.

In terms of consumer contracts, one characteristic of economic activity is that the offer originates from the supplier who presents it to the market for all those who are willing to enter into a contract, as long as the objective conditions of the offer that are related to the financial and economic capacities to pay for purchasing the product or service are satisfied. Therefore, if the supplier and the offeror are located abroad, where their offer originates, and the consumers reside in Brazil, the most appropriate scientific exegesis of the existing connection rule, relevant to the obligations in general would lead to the application of the consumer law of the country of the supplier.[40] Such circumstances could aggravate the consumer's situation, being subject to an unknown substantive law perhaps less protective than the one where they reside.

National case law, however, simply ignores the connection rules outlined in Article 9 of LINDB (as demonstrated below), and extends its application by applying the Brazilian CDC even to situations completely constituted abroad, under the aegis of foreign law.

However, Brazilian law is a scientific and systematic law whose normativity has legislation as its main source.[41] Thus, it is urgent to adjust the legal repository of rules of private international law, as well as the Brazilian consumer law, to the dominant jurisprudence. The dominating jurisprudence transforms the constitutional principle

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[39] LINDB, or Law of Introduction to Brazilian Law Standards, is the new name of Decree-Law 4,657 of 1942 (assigned by Law 12,376 of 2010), which was the old Law of Introduction to the Civil Code and main repository of the rules of Brazilian Private International Law.

[40] Coelho, F. U. (2005). *Curso de direito comercial: Vol. 3* (5th ed., pp. 42–43). Saraiva. (In Portuguese), defends this position and asserts that the Brazilian CDC does not apply to the consumer cross-border contract due to the rule stipulated in Article 9 of the LINDB.

[41] Legislation is the primary source of the Roman-Germanic legal systems, although jurisprudence has an important role in the creation of law. Under this theme, *see* lesson David, R. (2002). *Os grandes sistemas do direito contemporâneo* (4th ed., p. 111). Martins Fontes. (In Portuguese). It should be emphasised that in Brazil, judicial precedents have achieved special legal status and must be observed by the courts of lower instances. The application of some precedents, e.g. binding precedents of the Supreme Court, has become mandatory to all other instances.

of consumer protection into a high command, capable of restricting the application of a rule of connection legally established (in this case, the rules defined in Article 9 of the LINDB), as well as extending the applicability and effectiveness of other standards (in this case, those of the CDC), to resolve legal situations in foreign jurisdictions.

In turn, the role of case law in the formation of Brazilian consumer law is fundamental and necessary. Consumer law and the CDC would not have the importance in economic-legal relations they have today if the jurisprudence established in Brazilian courts had not advocated pragmatically for the status of the fundamental right of consumer protection.[42]

1.2. Evaluation of Cross-Border Consumer Litigation in Brazil

If the consumer needs to sustain a dispute with a foreign supplier abroad in order to enforce their violated rights – or, if in spite of the dispute being filed in the domicile of the consumer, some procedural acts need to be carried out in a foreign jurisdiction – they often face certain difficulties that encumber or obstruct the possibility of the consumer accessing justice or having their rights effectively protected. Such difficulties include: (a) the complexity of determining the competent jurisdiction in the international arena and the actual possibility for the consumer to be able to take legal action in the competent forum, especially in a foreign forum; (b) the diversity of national rules pertaining to consumer rights and the existence of different legal and judicial systems; (c) the high costs associated with conducting a legal dispute in which all the procedural formalities, or part of them, will take place abroad, particularly when the value of the contract is relatively small; (d) the compliance with acts in foreign country; and (e) the need for special procedures for the recognition and enforcement of foreign judgments.[43]

Brazilian courts, sensitive to the particular weakness of the international consumer and, as stated above, in the absence of a specific law on a national or international level, began to apply the laws of the CDC and the legal system in force in typical international consumer cases, thereby producing an important and avant-garde jurisprudence on the matter. Occasionally, however, the courts ignore, do not apply, or deliberately avoid the application of principles, methods, and standards of public policy that form the basis of private international law.

Furthermore, some legal decisions fall short or fail, either due to the omission of important procedural or material issues that they ought to have addressed or due to the deficient technical-legal reasoning supporting the conclusion and decision of the judging institution.

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[42] *Cf.* Beneti, S. (2011). O "fator STJ" no direito do consumidor brasileiro. *Revista de Direito do Consumidor*, *20*(79), 11–44. (In Portuguese).

[43] *Cf.* Comissão Europeia. (1996). *Guia del consumidor europeo en el mercado único* (2nd ed., pp. 17–19). Bruxelas. (In Portuguese).

One of the direct consequences of constructing international consumer protection jurisprudence without following sound legal technique is the limitation it imposes on the reach and impact of the resulting case law within the broader legal system of consumer protection.

In the construction of case law, there are some judicial decisions that can already be recognized as paradigmatic, or, to put it simply, as "leading cases." The first decision that stands out is the one rendered by the Superior Court of Justice (STJ) in the famous "Panasonic" case, Special Appeal 63,981-SP (registration 95.0018349-8), April 2000, published in the Journal of Justice (*Diário da Justiça – DJ*) on 20 November 2000. The designated rapporteur for the judgement was Minister Sálvio de Figueiredo Teixeira.[44]

In this pioneering precedent, a Brazilian consumer bought a video camera in the U.S. The camera was manufactured and distributed by U.S. Panasonic exclusively to that national market. When the consumer returned to Brazil, the camera showed a functioning flaw, and the consumer sued Panasonic Brazil. In the first and second instances of the Justice of the state of São Paulo, the action promoted by the consumer was extinguished without judgement on the merits due to the incapacity of Brazilian Panasonic to be sued, as it had not participated in the legal transaction. A special appeal was lodged, and the STJ, in a majority judgement and against the vote of the rapporteur, condemned Panasonic Brazil (a legal entity distinct from U.S. Panasonic) to answer for the flaws of the American product since it bears the same brand as the products manufactured by the national producer.

Based on this decision, Brazilian consumers can thus assert the legitimacy of proposing an action in Brazil against any legal entity within the national territory that integrates the same economic group of the foreign supplier and producer of the commodity, or against business owners who use the same brand to identify their products (even if they did not produce or offer the product that is the object of the consumer transaction).

Although this decision does not quote any specific standard, one can argue that the decision is sustained by Article 101, I, of the CDC.[45] Today, the new Civil Procedure Code (NCPC) reinforces this argument, which in Article 22, item II, expressly establishes international Brazilian jurisdiction to solve cross-border consumer conflicts when the consumer is domiciled in or a resident of Brazil.

Furthermore, on the basis of the aforementioned STJ decision, one can also argue that Article 28 of the CDC, which was expressly quoted by Minister Ruy Rosado de Aguiar in his vote, provides for the solidary liability of the legal entity based on national

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[44] This case was thoroughly examined, vote by vote, in Klausner, 2006, pp. 153–179.

[45] "Art. 101. In a civil liability action against the supplier of products and services, without prejudice to the provisions of chapters I and II of this title, the following standards shall be observed: I – the action can be proposed in the domicile of the author…"

territory that is part of the same brand group as the supplier of the commodity located abroad or the solidary liability of the businessman who uses the same brand to identify their products (even if they have not produced or directly marketed the object of consumption) for the flaws and damages caused by the product or service purchased abroad.

This interpretation spares the consumer from litigating with a supplier located abroad, thereby considerably simplifying the process of restoration of any infringed rights since no process or procedural act needs to be carried out abroad. That makes the STJ decision in the Panasonic case a highly relevant paradigm for the protection of Brazilian consumers in cross-border consumer transactions.

Another important aspect of this decision is the fact that the STJ applied the provisions of the CDC to determine the merits of the demand, even though the contractual relationship had been entirely established in the United States. In doing so, the STJ conferred extraterritorial effects on national law and disregarded the provisions of Article 9 of the LINDB regarding choice of law. This was done despite the fact that the LINDB is the specific law for conflict of law cases and that both the CDC and LINDB are public policy laws with mandatory rules and identical hierarchy and enforceability.

In line with the decision of the Panasonic case is the judgement rendered by the Court of Appeal of the state of Rio de Janeiro (TJERJ[46]) in the Motions for Reconsideration ("*Embargos Infringentes*" in Portuguese) 2001.005.00654, 15th Civil Chamber (Civil Appeal 2000.001.17098), process 98.001.020.871-0. In this case, which was judged by the state court, Sony Comércio e Indústria Ltda., a Brazilian company, was held liable due to the defects in a television set manufactured by Sony Corporation, a legal entity domiciled abroad.

This television was purchased by a Brazilian consumer from an independent importer in the Free Economic Zone of Manaus, a city in the northern region of Brazil, Amazonas state. The product in question was reportedly neither manufactured nor sold in Brazil by Brazilian Sony; however, the court ruled against the company and ordered them to provide the consumer with a television set in perfect condition and identical to the one purchased with defects, in addition to payment of compensation for moral damages.

The relevant factor in the decision of the state court is that, unlike in the Panasonic case mentioned above, it was proven that Sony Corporation controls the Sony Comércio e Indústria Ltda established in Brazil through stock shares. This was a fundamental element in the decision of the TJERJ.

These precedents have led to a series of court decisions that prioritise Brazilian consumer protection in international consumer relationships.

Brazilian case law has also shown a strong tendency to protect the consumer in cross-border consumer contracts in which the foreign element in the contractual

[46] Tribunal de Justiça do Estado do Rio de Janeiro. (In Portuguese).

relationship is not evident to the consumer, who often does not even imagine they will have to sustain a dispute abroad in case of contractual breach, flaw, or defect in the product or service. In such cases, Brazilian courts attribute responsibility to the business located in Brazil that is part of the chain that places the product on the market. The following can be used as examples: (a) the attribution of liability to travel agencies for failure to perform or for unsatisfactory performance of services and for damage caused by international tourism operators, carriers, hotels, and other service providers in the course of a tourist trip (STJ – REsp. 1102849/RS 2008/0274700-3 from April 17, 2012 and TJERJ Civil Appeal 0116320-50.2008.8.19.0002 from October 17, 2012); (b) the attribution of solidary liability to the domestic merchant in charge of the sale or maintenance of a product, for flaws of the imported product (TJERJ – Civil Appeal 0113148-32.2010.8.19.0002 from June 16, 2011 and TJERJ – Civ. Ap. 2005.001.44994 from July 18, 2011 and Civ. Ap. 2005.001.44994 of 18.07.2006); (c) the attribution of solidary liability to the authorized representative of the owner/entrepreneur in international contracts of purchase and sale related to a timeshare property located abroad (Court of Appeal of the state of Rio Grande do Sul – TJERGS – Civ. Ap. 196182760 from November 19, 1996 and Civ. Ap. 70012528519, decided on March 28, 2006).

With specific regard to international passenger air carriage, the issue merits more cautious examination. Although Brazilian jurisprudence has long been settled in refusing delimited compensation from international conventions and in granting full compensation for material and moral damages to the harmed consumer[47] (either in disputes motivated by loss of luggage, delays, loss of flight or connection, or overbooking), as can be seen in many Brazilian court decisions (including in decisions of the STJ), this stance has recently shifted.[48]

This issue of delimited compensation suffered a significant turnaround to the detriment of the consumer due to the trial of the Extraordinary Appeal 636331/RJ, brought by Société Air France, amicus curiae of the International Air Transport Association (IATA), American Air Lines Inc., and the International Union of Aerospace Insurers (IUAI).

This Extraordinary Appeal was admitted with General Repercussion in the Bill of Review 7621834 RG/RJ on October 22, 2009 by the STF.[49] This occurred because the main appeal raised issues of general repercussion[50] regarding the possibility of

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47 Dolinger, J., & Tiburcio, C. (2016). *Direito internacional privado: parte geral e processo internacional* (12th ed., p. 103). Forense. (In Portuguese).

48 *See* also, a themed collection of judgements of Brazilian courts in Klausner, 2013.

49 The Federal Supreme Court (Supremo Tribunal Federal – STF in Portuguese) is the highest Brazilian Court, competent to analyse federal constitutional issues, it is "the guardian of the Constitution," *cf*. Art 102 of the Constitution of the Federative Republic of Brazil.

50 The concept of "General Repercussions" is an intrinsic requirement of admissibility of the Extraordinary Appeal (*Recurso Extraordinário – RE*), disciplined by Article 102, paragraph 3 of the Federal Constitution; Articles 1,035 to 1,041 of the Civil Procedure Code and Articles 321 to 329 of the internal

delimiting compensation for moral and material damage caused by loss of luggage, based on the Warsaw and Montreal Conventions. These conventions had largely been disregarded in Brazilian courts, and which, based on the CDC, tended to favour full indemnification for consumers.

Despite the contrary opinion of federal prosecutors, the Extraordinary Appeal 636331 was considered valid on the basis of the vote of rapporteur Minister Gilmar Mendes by the plenary of the STF on May 25, 2017.[51] This STF decision, known as Case 210 (delimitation of compensation for damages arising from lost luggage based on the Warsaw Convention), is included in the STF's official list of "General Repercussion Theses," as follows,[52] *in verbis*:

Decision: The Court, analysing [T]heme 210, of General Repercussion, by majority and in accordance with the vote of the Rapporteur, having been defeated Ministers Marco Aurélio and Celso de Mello, upheld the appeal, to reduce the value of the conviction for property damage, delimiting it to the level set out in Article 22 of the Warsaw Convention, with the modifications made by subsequent international agreements. Then, the Court set the following thesis: "Pursuant to Article 178 of the Constitution, regulations and international treaties delimiting the compensation paid by carriers of passengers, especially the Warsaw and Montreal conventions, have prevalence in relation to the Consumer Protection Code," and Minister Marco Aurélio was defeated. Minister Alexandre de Moraes did not vote since he was succeeding Minister Teori Zavascki, who had already voted in a previous session. Minister Carmen Lúcia conducted the trial. Plenary, May 25, 2017.

It must be highlighted that the issue involving compensation for moral damages was omitted from the summary, despite being part of the official description of the original issue, Case 210.[53] The vote of the rapporteur and the text of the trial are available on the website of the STF.[54] However, in the text of the vote and debates,

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rules of the Federal Supreme Court (STF). The objective of this preliminary requirement of admissibility of the RE is "[t]o delimit the competence of the STF, in the judgment of extraordinary resources, to constitutional issues with social, political, economic, or legal relevance, that transcend the subjective interests of the cause" and "[t]o unify the constitutional interpretation without requiring the STF to decide multiple identical cases on the same constitutional issue." The legal thesis analysed by the STF in the affected and judged RE is summarised and numbered as a "case," so that its statement can be applied by the lower instances. For a brief explanation of the subject, *see* the page of the STF on the internet from which the excerpts quoted above were extracted: http://www.stf.jus.br/portal/cms/verTexto.asp?servico=jurisprudenciaRepercussaoGeral&pagina=apresentacao

[51] *Cf.* Supremo Tribunal Federal – STF, República Federativa do Brasil, website: http://www.stf.jus.br/portal/jurisprudenciaRepercussao/verAndamentoProcesso.asp?incidente=4040813&numeroProcesso=636331&classeProcesso=RE&numeroTema=210

[52] http://www.stf.jus.br/portal/jurisprudenciaRepercussao/abrirTemasComTesesFirmadas.asp

[53] *See* a description of Case 210 in the following page of the STF: http://www.stf.jus.br/portal/jurisprudenciaRepercussao/verAndamentoProcesso.asp?incidente=4040813&numeroProcesso=636331&classeProcesso=RE&numeroTema=210#

[54] http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=TP&docID=14028416

the rapporteur explicitly states that the limitation on compensation only applies to material damages.

Considering the terms of the summarised decision, it seems to be clear that by recognizing the prevalence of international treaties over the CDC, the STF decided the issue involving compensation for moral damages. The delimited compensation provided for in the aforementioned treaties includes indemnification for material damage and loss of profits, as well as for moral damages in the hypotheses expressly provided for in the International Convention. The Warsaw and Montreal Conventions, referred to by the STF in its decision, establish delimited compensation for the injury and death of passengers, as well as moral damages. This is in addition to lost luggage and travel delays, which are typically classified as material damage (cf. Arts. 17 and ff. of the Montreal Convention).

In the event of damaging facts unfavourable to consumers that are not properly planned and covered by compensation delimited in international treaties on air transport, there is no doubt that the CDC will be applied; otherwise, the consumers could be deprived of legal protection, which would be unconstitutional by virtue of item XXXII of Article 5 of the Brazilian Constitution.

The determination by the STF on Case 210, from the repertoire of the aforementioned General Repercussion Theses, is likely to resolve another issue pertaining to the limitation period related to the issue of the international air transport of passengers, specifically concerning the prescription or the right to claim. In this respect, there was divergent jurisprudence between the Federal Supreme Court (STF) and the Superior Court of Justice (STJ). A particular trial of the STF (RE 297901, tried on March 7, 2006) applied the limitation period of two years provided for in the Warsaw Convention,[55] and not the five-year period present in the CDC, while another STJ decision rendered much later (AgRg in AREsp 96,109/MG, tried on May 5, 2012) stipulated otherwise, fixing the limitation period of the CDC as prevailing. The decision of the STF summarised in Case 210 is clear when it establishes the prevalence of provisions contained in the treaties of air transport when there is conflict with the provisions of law. The STF decision of 2017 (ARE 766.618/SP) also confirms this position.

The position of the STF is consistent with sound methodology and the duty to respect international treaties. Brazil is part of the 1969 Vienna Convention on the Law of Treaties, enacted by Decree 7,030 of December 14, 2009, which determines in Article 27 that "[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty."

Finally, certain recent trials deserve mention, which, in an unusual way, have held travel agencies[56] responsible when the service is hampered by the fact that

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[55] For further information on this case, *see* also, ARE 766.618/SP, rap. Min. Luís Roberto Barroso.

[56] Currently, travel agencies have their activities governed by Law 12,974 of May 15, 2014, among other standards but are still subject to the CDC, when it regards their relations with consumers of their services.

consumers, or someone in their family, were not carrying mandatory personal documents, such as necessary visas and identity documents.

Tourists who are forbidden to embark on international flights or cruises or who are deported for not having the proper documents or consular visa have succeeded in bringing indemnity actions against travel agencies and carriers, based on allegations that the supplier did not provide adequate information, although the case law in this regard is not yet fully settled. Examples include: the TJERJ judgements 0062438-16.2007.8.19.0001, decided on March 2, 2010 and 0191227-33.2007.8.19.0001, decided on September 14, 2011; as well as the TJERGS judgements 70036261139, decided on July 1, 2010 and 70040635666, decided on March 31, 2011.

2. Legal Framework Needed for Private International Law to Address Brazilian Consumer Protection

As demonstrated above, the CDC has been widely used by judges to resolve any conflict involving cross-border consumer transactions. Private international law, its principles and methods are, as a rule, completely ignored. This approach, while protective of the consumer, is not always positive for the broader interests of international trade and legal coherence.

Therefore, in order to overcome this anomie arising from the problems resulting from postmodern and cross-border consumer relations, particularly with regard to electronic commerce and tourism agreements, two legislative bills (*projeto de lei – PLS* in Portuguese) Nos. 281 and 283 of 2012 were prepared by a Commission of Jurists to upgrade the CDC[57] and have already been approved in the Federal Senate.

PLS 281 of 2012, which was approved in the Federal Senate and referred to the Chamber of Deputies for examination and approval, has received the identification CD PL 3,514/2015 and aims, specifically, to introduce positive regulations of private international law for enhancing consumer protection within the legal system. This bill amends the text of Article 101 of the CDC to clearly favour the consumer by establishing jurisdiction based on the consumer's domicile. It also guarantees that consumers have the option of choosing the forum that best suits their interests in litigation with the supplier, whether that be the jurisdiction in which the contract was concluded or carried out or any other relevant connection with the case. The article is inspired by Regulation 1,215/2012 and Regulation 44/2001 of the European Community, Articles 17–19 and 15–17, and, more remotely, by the 1968 Brussels Convention, Articles 13–15.

Furthermore, the Senate bill prohibits contractual forum-selection clauses and arbitration, following the position adopted by the Brazilian doctrine. The forum-

[57] On the subject, *see* also, Marques, C. L. (2014). Extrato do Relatório-Geral da Comissão de Juristas do Senado Federal para atualização do Código de Defesa do Consumidor (14.03.2012). *Revista de Direito do Consumidor, 92*, 303–366. (In Portuguese).

selection clause that delimits the jurisdiction to the detriment of the consumer's interest is considered unfair in Brazilian doctrine in national and international contracts. The new Civil and Commercial Code of Argentina also considers unfair a forum-selection clause in cross-border consumer contracts, and such a clause is thus prohibited (Art. 2651).

As a general rule, Brazilian consumer doctrine does not admit the possibility of consumer conflicts being resolved by means of arbitration, although Brazilian jurisprudence supports this approach. Foreign doctrine also recognises that the traditional model of arbitration fails to adequately safeguard the rights and interests of consumers,[58] despite arbitration having often demonstrated its effectiveness in resolving international conflicts in the European Community.

The aforementioned planned amendment reinforces the majoritarian jurisprudence of the STJ in terms of the jurisdiction for consumers' demands. The STJ considers the domicile of the consumer as the appropriate forum in an absolute manner. This procedural framework allows first-instance judges to declare themselves incompetent to prosecute and judge the claim and to *ex officio* decline jurisdiction in favour of the consumer's domicile, even if the supplier filed the claim in another forum and the contract includes a forum-selection clause, provided that the consumer has not yet been served. The text of Article 22, II, of the Civil Procedure Code was not clear in determining the exclusive competence of the Brazilian judge for cross-border disputes, which has led to interpretative gaps and ambiguity.[59]

The bill mentioned above also introduces a sole paragraph in Article 101 to ensure to the international consumer the application of law in their domicile in conflicts of cross-border consumer relations, allowing the choice of another consumer protection law, if it is more advantageous for the consumer.

PLS 281/2012 also changes the LINDB significantly in terms of international consumer protection, including Article 9-A. The *caput* conceptualises the international consumer contract and establishes that the law of the place where the contract was concluded is the law that is applicable or, in the case of a contract to be performed in Brazil, the Brazilian law is applicable, whichever is more favourable to the consumer. For contracts entered into from a distance, the first paragraph determines that the advertising or offers made to consumers in Brazil entail the application of Brazilian law to the legal contract, whenever it is more favourable to the consumer.[60]

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[58] Saumier, G. (2010). L'arbitrage de consommation équitable : option ou illusion ? In P. C. Lafond & B. Moore (Eds.), *L'équité au service du consommateur* (pp. 103, 125). Yvon Blais. (In French).

[59] *See* Mahler, E. M. S. (2009). A releitura do Enunciado n. 33 da Súmula do STJ. *Revista Eletrônica de Direito Processual*, *3*(3), pp. 137–153 for more on the subject and related criticism; and Vieira, L. K. (2016). Os 25 anos de vigência do CDC e as relações internacionais de consumo: desafios e perspectivas. *Revista de Direito do Consumidor*, *103*, 101, 125. (In Portuguese).

[60] The permission to choose the legislation that is the most favourable to the consumer, without depriving them of the protection of the law of their residence, has been considered the best solution to

Finally, paragraph 2 defines the provisions for travel contracts, determining the application of Brazilian law when the tourism agency, or the operator, is located in Brazil. However, this provision needs to be harmonised with the one cited in the previous paragraph, since many carriers sell tour packages directly through the internet and their headquarters are typically located abroad.[61]

Final Considerations

As has been evidenced in this brief study, consumer law, and, more specifically, the Brazilian CDC, has made rapid progress in its effectiveness. Brazilian consumer law, through deliberate and careful case law interpretation, has evolved into an efficient legal system on consumer protection and, consequently, in safeguarding an important human right that protects consumers.

Cross-border consumer transactions and the demands that naturally arise from it, however, are another challenge that remains to be effectively addressed and a conflicting situation to be faced by the science of law. At the same time, the Brazilian legal system has demonstrated the capacity to adapt and address these new conflicts arising from globalisation through creative jurisprudence that is remarkably post-positivist and well-suited for defending consumer rights. Nonetheless, the need for updating the CDC and the rules of private international law remains urgent in order to better address these new problems.

The legislative proposal currently under discussion in the National Congress, which seeks to update the CDC and LINDB, must be approved to further improve the protection and defence of the Brazilian consumer in cross-border consumer relations.

Moreover, the implementation and achievement of the treaties still in negotiation and aimed at consumer protection at the international level are also needed so as to ensure the broadest protection of the Brazilian consumer. In this way, one more step will be made towards the dawn of a cosmopolitan law for consumer protection, which will elevate humanity to a new level in the universal protection of human rights.

References

Arrighi, J. M. (2001). Capítulo VII – Comercio internacional y protección del consumidor. In G. Stiglitz (Ed.), *Defensa de los consumidores de productos y servicios: Daños – contratos.* La Rocca. (In Portuguese).

cross-border consumer contracts. In this line, *see* Rühl, G. (2011). Consumer protection in choice of law. *Cornell International Law Journal*, *44*(3), 570–600.

[61] In this respect, the draft bill is more protective than Regulation 1,215/2012 of the European Community, as can be deduced from the work of Gardeta, J. M. V. (2015). El actual reglamento 1215/2012 (Bruselas I Bis) y la protección del consumidor on-line: ¿una oportunidad perdida? *Revista de Direito do Consumidor*, *101*, 299–320. (In Spanish).

Arroyo, D. P. F. (2010). La protection des consommateurs dans les relations privées internationales. In D. P. F. Arroyo (Ed.), *Consumer protection in international private relationships* (pp. 703–748). CEDEP.

Beneti, S. (2011). O "fator STJ" no direito do consumidor brasileiro. *Revista de Direito do Consumidor*, *20*(79), 11–44. (In Portuguese).

Calay-Auloy, J., & Steinmetz, F. (2006). *Droit de la consommation* (7th ed.). Dalloz. (In French).

Cavalieri Filho, S. (2003). *Programa de responsabilidade civil* (4th ed.). Malheiros. (In Portuguese).

Cavalieri Filho, S. (2008). *Programa de direito do consumidor*. Atlas. (In Portuguese).

Coelho, F. U. (2005). *Curso de direito comercial: Vol. 3* (5th ed.). Saraiva. (In Portuguese).

Collins, L., Briggs, A., Harris, J., et al. (Eds.). (2006). *Dicey, Morris and Collins on the conflict of laws: Vol. 1* (14th ed.). Sweet & Maxwell.

Comissão Europeia. (1996). *Guia del consumidor europeo en el mercado único* (2nd ed.). Bruxelas. (In Portuguese).

David, R. (2002). *Os grandes sistemas do direito contemporâneo* (4th ed.). Martins Fontes. (In Portuguese).

Dolinger, J., & Tiburcio, C. (2016). *Direito internacional privado: parte geral e processo internacional* (12th ed.). Forense. (In Portuguese).

Donato, M. A. Z. (1994). *Proteção ao consumidor: conceito e extensão*. Revista dos Tribunais. (In Portuguese).

Galves, C. (1996). *Manual de economia política atual* (14th ed.). Forense Universitária. (In Portuguese).

Gardeta, J. M. V. (2015). El actual reglamento 1215/2012 (Bruselas I Bis) y la protección del consumidor on-line: ¿una oportunidad perdida? *Revista de Direito do Consumidor*, *101*, 299–320. (In Portuguese).

Garner, B. A. (Ed.). (2006). *Black's law dictionary* (3rd ed.). Thomson/West.

Graeff, B., & Pereira, W. M. (2012). Regional harmonization attempts on consumer law: The examples of MERCOSUR and the OAS. In C. L. Marques, D. P. F. Arroyo, I. Ramsay, & G. Pearson (Eds.), *The global financial crisis and the need for consumer regulation: new developments on international protection of consumers* (pp. 181–193). Orquestra.

Grinover, A. P., Benjamin, A. H. de V., et al. (1999). *Código brasileiro de defesa do consumidor: comentado pelos autores do anteprojeto* (6th ed.). Forense Universitária. (In Portuguese).

Halfmeier, A. (2003). Waving goodbye to conflict of laws? Recent developments in European Union consumer law. In C. E. F. Rickett & T. G. W. Telfer (Eds.), *International perspectives on consumers' access to justice* (pp. 384–406). Cambridge University Press.

Howells, G., & Weatherill, S. (2005). *Consumer protection law* (2nd ed.). Ashgate.

Howells, G., Ramsay, I., & Wilhelmsson, T. (2010). Consumer law in its international dimension. In G. Howells, I. Ramsay, T. Wilhelmsson, & D. Kraft (Eds.), *Handbook of research on international consumer law* (pp. 1–17). Edward Elgar.

Klausner, E. A. (2005). Jurisdição internacional em matéria de relações de consumo no Mercosul: sugestões para a reedição do Protocolo de Santa Maria. *Revista de Direito do Consumidor*, *14*(54), 116–142. (In Portuguese).

Klausner, E. A. (2006a). Reflexões sobre a proteção do consumidor brasileiro nas relações internacionais de consumo. C. Tiburcio & L. R. Barroso (Eds.), *O direito internacional contemporâneo: estudos em homenagem ao professor Jacob Dolinger*. Renovar. (In Portuguese).

Klausner, E. A. (2006b). *Direitos do consumidor no Mercosul e na União Européia: acesso e efetividade*. Juruá. (In Portuguese).

Klausner, E. A. (2008). O desafio da globalização do consumo nos dezoito anos do Código de Defesa do Consumidor brasileiro. *Fórum: Revista da Associação dos Magistrados do Estado do Rio de Janeiro*, *Ano XX*, *19*. (In Portuguese).

Klausner, E. A. (2008). Perspectivas para a proteção do consumidor brasileiro nas relações internacionais de consume. *Revista CEJ*, *12*(42), 59–75. (In Portuguese).

Klausner, E. A. (2012). *Direito Internacional do Consumidor: a proteção do consumidor no livre-comércio internacional*. Juruá. (In Portuguese).

Klausner, E. A. (2015). A proteção do consumidor brasileiro na globalização das relações de consumo. C. Tiburcio (Ed.), *Direito Internacional: Coleção direito UERJ 80 Anos: Vol. 6*. Freitas Bastos. (In Portuguese).

Lorenzetti, R. L. (2003). *Consumidores*. Rubinzal – Culzoni. (In Portuguese).

Marques, C. L. (2002). A proteção do consumidor de produtos e serviços estrangeiros no Brasil: primeiras observações sobre os contratos à distância no comércio eletrônico. *Revista da Faculdade de Direito da UFRGS*, *21*(21). https://doi.org/10.22456/0104-6594.72366. (In Spanish).

Marques, C. L. (2002). *Contratos no Código de defesa do consumidor: o novo regime das relações contratuais* (4th ed.). Revista dos Tribunais. (In Portuguese).

Marques, C. L. (2014). Extrato do Relatório-Geral da Comissão de Juristas do Senado Federal para atualização do Código de Defesa do Consumidor (14.03.2012). *Revista de Direito do Consumidor, 92*, 303–366. (In Portuguese).

Marques, C. L., Benjamin, A. H. V., & Bessa, R. L. (2007). *Manual de direito do consumidor*. Revista dos Tribunais. (In Portuguese).

Marques, C. L., Benjamin, A. H. V., & Miragem, B. (2003). *Comentários ao Código de defesa do consumidor: arts. 1. a 74, aspectos materiais*. Revista dos Tribunais.

Nery N., Jr. (1992). Os principios gerais do codigo brasileiro de defesa do consumidor. *Revistade Direito do Consumidor*, *3*, 44–77. (In Portuguese).

Nunes, L. A. R. (2004). *Curso de direito do consumidor.* Saraiva. (In Portuguese).

Ostanina, E., & Titova, E. (2020). The protection consumer rights in the digital economic conditions: The experience of the BRICS countries. *BRICS Law Journal, 7*(2), 118–147. https://doi.org/10.21684/2412-2343-2020-7-2-118-147

Rühl, G. (2011). Consumer protection in choice of law. *Cornell International Law Journal*, *44*(3), 570–600.

Saumier, G. (2010). L'arbitrage de consommation équitable : option ou illusion ? In P. C. Lafond & B. Moore (Eds.), *L'équité au service du consommateur* (pp. 103–127). Yvon Blais. (In French).

United Nations Conference on Trade and Development. (2016). *Guidelines for consumer protection.* United Nations.

Vieira, L. K. (2016). Os 25 anos de vigência do CDC e as relações internacionais de consumo: desafios e perspectivas. *Revista de Direito do Consumidor*, *103*, 101–125. (In Portuguese).

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