

25 YEARS OF CDC'S VALIDITY AND THE INTERNATIONAL CONSUMPTION RELATIONS: CHALLENGES AND PERSPECTIVES¹

Luciana Klein Vieira

PhD in International Law and Master in International Private Law from University of Buenos Aires (UBA). Master in Economic Integration Law From University Del Salvador (USAL) e University Paris I – Panthéon Sorbonne. Research professor of University of Vale do Rio dos Sinos (UNISINOS) at the Post-Graduation Program in Law. Teacher of Integration Law at UBA. Counselor of The U.N. Development Program (UNDP), hired by the National Consumer Secretary (SENACON). Deputy director for MERCOSUL in Brazilian Institute of Politics and Consumer's Law (BRASILCON). Board Member in the American Association of International Private Law (ASADIP)

Received: 2018-09-07. Accepted: 2019-06-22

Abstract: This article examines the CDCs lack of normative prediction regarding the cross-border consumption relationship, which is believed to be one of the great challenges for the next years

Key-words: CDC; Consumption relations; cross-border consumption.

1. INTRODUCTION

Exactly 25 years ago, Brazilian law was the stage of a huge legislative transformation operated in order to recognize a vulnerable part of the contractual relations. Therefore, in this aspect, there was exclusively applied the Civil Law postulates, in rules of civil obligation, guided by the general principle of hierarchic parity between contractors. There were no rules that, considering the real unbalance

¹ Translated by Anna Clara Liberal Couto Cícero

or disparity in the negotiation terms presented by the different parties involved in the acquisition of a product or service, that would allow the incidence of protection rules, aimed to reestablish the balance, although formal, between contractors.

Fulfilling this aspiration, our country, on September 11 1990, through the sanction of Law nº 8.078, it has come to count on an independent diploma, destined,² consistent and harmonic, composed by its own rules and principles, resulted of an constitutional order imposition, that derives from article 49 of the Act of Constitucional Disposition Transitory, which was given a period of 120 days as deadline to Congress, as Constitution is enacted, to craft the Consumer's Defense Code.

Therefore, the 1988's Carta Magna, for the first time in Brazil's history³, the Consumer's Rights existence was constitutionally conceived, as an autonomous legal discipline, treating it as a legal right and fundamental guarantee, of third generation, linked to the social rights dimension. This projection was inserted in subsection XXXII of article 5th – Individual and Collective Rights Chapter –, which led to the consumer's identification and recognition as subject in vulnerability condition, authorizing the incidence of a special protection.

Besides recognizing the consumer's fragility, the constitutional text, as seen, recommended to edit a special law that would establish a positive protection law,⁴ elevating this measure to the condition of a public order economic principle,⁵ in art. 170, subsection V, that requires a positive action of public powers, suggesting, at the same time, that it combines the objective of protecting the consumer with the country's

2 AMARAL JÚNIOR, Alberto do. *Proteção do Consumidor no Contrato de Compra e Venda*. São Paulo: Editora Revista dos Tribunais, 1993. pp. 215-218.

3 MARQUES, Cláudia Lima. "Brésil". In: FERNÁNDEZ ARROYO, Diego P. (ed.) *Consumer Protection in International Private Relationships. La Protection des Consommateurs dans les Relations Privées Internationales*. Asunción: CEDEP, 2010. p. 49.

4 Ver: COMPARATO, Fábio Konder. "A proteção do consumidor na Constituição brasileira de 1998". In: *Revista de Direito Mercantil, Industrial, Econômico e Financeiro*. Nº 80. 1990. pp. 66-75.

5 According to the doctrine, consumer protection as a principle of economic public order functions as an instrument that imposes a limit to free initiative, specifically with regard to the autonomy of the will of professionals and traders. (TEPEDINO, Gustavo. "Les contrats de consommation au Brésil". In: WALD, Arnold; JAUFFRET-SPINOSI, Camille. (Dir.) *Le Droit Brésilien: hier, aujourd'hui et demain*. Paris: Société de Législation Comparée, 2005. p. 434.) In the same vein, Miragem adds that the fundamental principle inserted in the Brazilian Constitution, in art. 170, subsection V, considers consumer protection as a principle of public order of direction and coordination. (MIRAGEM, Bruno. *Direito do Consumidor: fundamentos do direito do consumidor; direito material e processual do consumidor; proteção administrativa do consumidor; Direito Penal do consumidor*. São Paulo: Editora Revista dos Tribunais, 2008. p. 32.)

social and economic development.⁶

Similarly, the Federal Constitution determines the law should adopt measures so the consumers would be well-informed about tributes that are imposed to duties and services, in article 150, paragraph 5th, giving constitutional hierarchy to the transparency principle of consuming relations. Besides that, it was established, in the article 24, section VIII, the rule of reimbursement of damages caused to the consumer, whose subject matter is shared competence between the Union, the States and the Federal District.

In addition, the Constituent Assembly mentioned the need to grant protection to the consumer, even though indirectly, in arts. 175, sole paragraph, when referring to the right to use public services, privatized or not; 220, paragraph 4, by setting limits on advertising involving the consumption of tobacco, alcoholic beverages and pesticide products; and 221, in creating guidelines for the use of television and broadcasting.

However, even though the 1988 constitutional text was largely responsible for approving this set of own and special rules for consumer relations which were established in a contractual, pre-contractual or non-contractual manner and which involve the acquisition and / or the use of products and services, the fact is that both the Magna Carta and the CDC no longer deal with the consumer who develops the relationship of consumption beyond national borders. Although it is a cutting-edge Code, which gives consumer protection policy an autonomous status and gives the consumer one of the highest levels of protection in the world, it is a lack of normative prediction regarding the cross-border consumption relationship, which we will analyze next, which we believe will be one of the great challenges for the next years of the CDC.

2. THE BRAZILIAN PRIVATE INTERNACIONAL LAW AND THE CONSUMER

The private International Law, whose main scope must be linked to the concern with the satisfaction of the postulate of the dignity of the human person, plays a fundamental role for the protection of the consumer. In this sense, Fausto Pocar warned in the 1980s that the protection of the vulnerable part, besides being a function of material law, should also be part of the main objectives of the aforementioned discipline.⁷

In this way, it is assumed that the function of the postmodern iusprivatista right must go beyond the simple indication of the

6 Read: AMARAL JÚNIOR, Alberto do. *Op. cit.* p. 219.

7 POCAR, Fausto. «La protection de la partie faible en droit international privé». In: *Recueil des Cours de l'Académie de Droit International*. Tomo 188. 1984. p. 357.

applicable law or the competent judge and this is evidenced, mainly, in those international relations that demand for a greater protection to the vulnerable subject.

To corroborate the above, Erik Jayme argues that classic private international law had as its main purpose the guarantee of harmony in the international legal community and in the enforcement of foreign decisions. Thus, it was a formal and objective ideal, derived from the influence of great nineteenth-century authors, such as Savigny. Conflict justice was based on the pure idea of connecting, in this case, with a country that justified the application of the law of that State, regardless of the concrete result derived from the application of the rule.⁸ This view, nowadays, is superseded by the introduction of the idea of the materialization of Private International Law, in the sense that the best law, that is, the most favorable to the vulnerable subject, should be the one that is applicable, which leads to a real relaxation of the methods of the mentioned discipline.

As we will see, the continuation of Private International Private Consumer Law in Brazil is still a pending regulatory issue, although recently, with the approval of the new Code of Civil Procedure, some progress has been made. In this way, we currently have no current regulations designed to offer international protection to the consumer, a situation that aggravates the latter's vulnerability, when it acts with cross-border projection, and becomes a source of mistrust, lack of legal certainty and low credibility in trade International.

2.1. Qualification

Before entering into discussions on applicable law and the competent court in international consumer contracts, it is necessary first to qualify what is meant by consumer in order to determine who is covered by state protection.

In this sense, the CDC, in art. 2, defines the consumer as being any natural or legal person, who acquires or uses a product or service⁹ as the final recipient.

As the most authoritative doctrine warns, the Code opted for a broad definition of consumer, with one objective element (the

8 JAYME, Erik. "O direito internacional privado do novo milênio: a proteção da pessoa humana face à globalização". In: *Cadernos do Programa de Pós-Graduação em Direito PPGDir/UFRGS. Edição em Homenagem à Entrega do Título de Doutor Honoris Causa/UFRGS ao Jurista Erik Jayme*. Vol. I. Nº 1. Mar./2003. p. 61.

9 Likewise, by virtue of the provisions of art. 175 of the Federal Constitution, cited above, consumers are those who use public services. About the topic, search: SCHMITT, Cristiano Heineck. *Consumidores Hipervulneráveis. A Proteção do Idoso no Mercado de Consumo*. São Paulo: Atlas, 2014. pp. 179-180.

destination) and the other subjective (the use of products and services contracted for personal or family needs).¹⁰

Thus, in order for the subject to be considered a consumer, he must withdraw the good from the market by acquiring it or simply using it, putting an end to the production chain, by not using it professionally.¹¹

This interpretation, of finalist order, restricts the figure of the consumer to the one who acquires the product or service for his own use or that of his family,¹² and has been used doctrinally and jurisprudentially. Nevertheless, it is interesting to note that since the entry into force of the Civil Code of 2002,¹³ the Superior Court of Justice (STJ) has been adopting a thorough finalist interpretation of art. 2 of the CDC. For the Court, a small company or a professional who purchase products outside their specialty can enjoy the protection of the law. For this, in addition to the need to prove the final destination of the product or service, the vulnerability of the acquirer in the specific case must also be proven.¹⁴

10 MARQUES, Cláudia Lima. “Brésil”. *Op. cit.* p. 55.

11 MARQUES, Cláudia Lima; MIRAGEM, Bruno; BENJAMIM, Antonio Herman. *Comentários ao Código de Defesa do Consumidor*. 2ª ed. São Paulo: Editora Revista dos Tribunais, 2006. p. 83. In this sense, let us consider the following judgment that once again defined the concept of consumer adopted in the country: “the term ‘final recipient’ contained in art. 2, caput of the CDC must be interpreted in the light of the reason why the said decree was issued, that is, to protect the consumer because it is recognized its vulnerability to the consumer market. Thus, consumers are those who withdraw the product from the market and use it for their own benefit. Under this approach, as a rule, a final recipient for the purpose of the protective law can not be considered as one who, in some way, acquires the product or service with a professional purpose, for the purpose of integrating it in the process of production, transformation or commercialization.” (STJ. QUARTA TURMA. Recurso Especial nº 1162649/SP. “Federal Express Corporation c/ Indiana Seguros S/A”. Min. Relator Luís Felipe Salomão. Julgado em 13/5/2014. Published in: *DJe*, de 18/8/2014. Available in: https://ww2.stj.jus.br/processo/revista/documento/mediado/?componente=ITA&sequencial=1309746&num_registro=200902092021&data=20140818&formato=PDF, acesso em 20/7/2015.)

12 ODY, Lisiane Feiten Wingert. “O conceito de consumidor e noção de vulnerabilidade nos países do Mercosul”. In: *Revista de Direito do Consumidor*. Nº 64. Out./Dez. 2007. p. 86. On the other hand, the maximalist chain asserts that the concept of consumer also applies to relations in which the good or the service acquired is destined to production, that is, to the satisfaction of professional needs, which greatly amplifies the definition given by the law. Here, it does not matter what use will be made of the good or service purchased. According to the doctrine, maximalists consider as consumers those subjects who are actually recipients of the products or services, regardless of whether they are also economic recipients. They therefore advocate a broader interpretation of the term “final recipient”. (CRUZ, Carolina Dias Tavares Guerreiro. *Contratos Internacionais de Consumo. Lei Aplicável*. Rio de Janeiro: Editora Forense, 2006. p. 51.)

13 Lei nº 10.406, de 10/01/2002, publicada no *Diário Oficial da União (D.O.U.)* nº 8, de 11/01/2002.

14 Read: “Civil lawsuit. Conflict of competence. Contract. Election Forum. Consumer

In other words, companies can also be considered as consumers, since the Code does not exclude this possibility, also extending the notion of vulnerability, in certain cases, according to the position of the STJ.¹⁵ Não obstante, cabe ao fornecedor Nevertheless, it is for the

relationship. Hiring of credit service by company. Final destination characterized. - Those who exercise business assume the status of consumer of the goods and services that they acquire or use as the final recipient, that is, when the good or service, even if it forms part of the business establishment, does not directly integrate - through transformation, assembly, processing or resale - the product or service that may be offered to third parties. - The entrepreneur or business company whose primary activity is the wholesale or retail distribution of medicines must be considered as the final recipient of the payment service by means of a credit card, since this activity does not directly integrate the object product of your company.” (STJ. SEGUNDA SESSÃO. Conflito de Competência nº 41.056/SP. “Farmácia Vital Brasil Ltda c/ Companhia Brasileira de Meios de Pagamento”. Min. Relatora Nancy Andrichi. Julgado em 23/06/2004. Published in: *DJ*, de 20/9/2004. Available in: https://ww2.stj.jus.br/processo/revista/documento/mediado/?componente=ITA&sequencial=474096&num_registro=200302274186&data=20040920&formato=PDF, acesso em 20/7/2015.) In the same sense: “Civil and Consumer Proceedings. Contract of Purchase and Sale of embroidery machine. Manufacturer. Acquirer. Vulnerability. Consumer relationship. Nullity of elective forum clause. 1. The Second Section of the STJ, in ruling REsp 541.867 / BA (...) opted for the subjective or finalist conception of consumer. 2. The finalist theory, however, should be slowed down by allowing the application of CDC rules to certain professional consumers, provided that technical, legal or economic vulnerability is demonstrated. 3. In the present case, it is the conflict between a machine-manufacturing company and a supplier of software, supplies, parts and accessories for the clothing business and a natural person who acquires an embroidery machine for its survival and their economic vulnerability. 4. In this case, the application of the consumer protection rules, namely the nullity of the elective forum clause, is justified. “ (STJ. TERCEIRA TURMA. Recurso Especial nº 1010834/GO. “Sheila de Souza Lima c/ Marbor Máquinas Ltda”. Min. Relatora Nancy Andrichi. Julgado em 03/08/2010. Published in: *DJe*, de 13/10/2010. Available in: https://ww2.stj.jus.br/processo/revista/documento/mediado/?componente=ITA&sequencial=957385&num_registro=200702835038&data=20101013&formato=PDF, acesso em 23/7/2015.

15 In this way, it is interesting to highlight the interpretation given by the STJ regarding the inclusion of the legal person in the concept of consumer. Thus: “A systematic and teleological interpretation of the CDC points to the existence of a presumed vulnerability of the consumer, including legal entities, since imposing limits on the presumption of vulnerability would imply an excessive restriction incompatible with the very spirit of facilitating consumer protection and of the recognition of their hyposufficiency, a circumstance that is not in line with the constitutional principle of consumer protection, provided for in arts. 5th, XXXII, and 170, V, of the CF. In short, the general rule prevails is that the characterization of the consumer condition requires a factual and economic final destination of the good or service, but the presumption of consumer vulnerability leaves room for the CDC’s exceptional incidence on business activities, which will only be deprived of protection of the consumer law when proven by the supplier, the non-vulnerability of the corporate consumer. - By inviting the legal entity to the concept of consumer, the intention of the legislator was to grant protection to the company in cases where, by participating in a legal relationship as a consumer, its ordinary condition as a supplier does not give it an equal position vis- contrary. In other words, the

supplier's onus probandi to exclude the application of the CDC from the legal relationship involving a company which is presumably covered by consumer status.¹⁶ Therefore, it is important to emphasize that case law tends to assess case by case the vulnerability of the legal entity that is in the position of "average consumer" to specify the objective criterion of the final destination. The possibility that legal entities have the character of "consumers" is one of the characteristics of Brazilian law, but examples of practical application of art. 2, in favor of legal entities in international contracts.¹⁷

Still in relation to the subject, it is important to emphasize that the Code allows an extension of the concept under study, when it refers to the equation of certain subjects to the classic figure of the consumer, in arts. 2, single paragraph, 17 and 29, regardless of the contractual relationship generated in a typical consumption relationship.¹⁸

Thus, the group of persons, even if indeterminable, who intervened in consumer relations (Article 2, sole paragraph); all victims of damage caused by defect or insecurity generated by the product (article 17); and persons who may be exposed to commercial practices (Article 29) are considered as consumers by equalization or bystander.¹⁹ As it turns out, the system set up by the CDC greatly broadens the concept of consumer, since, by adopting the notion of consumer by assimilation, it refers to

“un sin número de personas que eventualmente se enfrenten a todo tipo de ‘prácticas comerciales’

legal person must have the same degree of vulnerability that any ordinary person would meet in celebrating that business, in order to maintain the imbalance of the consumption relation. The 'parity of arms' between the supplying company and the consuming company removes the presumption of its fragility. Such a consideration is extremely relevant, since the same legal entity, as a consumer, may be vulnerable in certain consumer relations and in others not." (STJ. Recurso Ordinário em Mandado de Segurança nº 27512/BA. "Plascalp produtos cirúrgicos Ltda c/ Banco Safra S/A". Min. Relatora Nancy Andriahi. Julgado em 20/08/2009. Published in: DJe, em 23/09/2009. Available in: https://ww2.stj.jus.br/processo/revista/documento/mediado/?componente=ITA&sequencial=905277&num_registro=200801579190&data=20090923&formato=PDF, acesso em 22/7/2015.

16 Look for judgment mentioned above and SCHMITT, Cristiano Heineck. *Op. cit.* pp. 172-174.

17 MARQUES, Cláudia Lima. "Brésil". *Op. cit.* p. 58.

18 Read: TINAJEROS ARCE, Érika Patrícia. "La protección del consumidor electrónico en los países del MERCOSUR". In: *Revista de Direito do Consumidor*. Nº 54. Abr./Jun. 2005. p. 178.

19 KLAUSNER, Eduardo Antônio. *Direitos do Consumidor no Mercosul e na União Europeia: acesso e efetividade*. 2ª ed. Curitiba: Juruá, 2007. p. 88. This equation also occurs in the event of an air accident, explosion in the establishment of sale of fireworks or in situations of risk involving the relatives of the consumer. (ODY, Lisiane Feiten Wingert. *Op. cit.* p. 88.)

como ofertas, publicidade, etc., despertando enormes possibilidades en cuanto a la aplicación de las normas protectoras del CDC, al permitir que la propia sociedad dictamine en este caso qué sujetos quedarán comprendidos.”²⁰

Nevertheless, as Marco Antônio Zanellato warns, this regulation can not be considered without taking into account the integrality of the system established by the Code itself. Therefore, only the consumer who uses the good or service as a result of exposure to an abusive commercial practice, in the pre-contractual phase, will be considered a consumer equivalent. With this, the objective is the protection of potential consumers, without there being a direct relation with a previously completed consumer contract.²¹

Finally, it is interesting to note that the bills of the Federal Senate that are currently being processed in the National Congress, designed to modify, update and improve the CDC in relation to electronic commerce,²² collective actions²³ and prevention of over-indebtedness²⁴ of the weak part of the consumption relationship, they all maintained the current consumer qualification.

2.2 International Jurisdiction

Regarding international jurisdiction, one of the main objects of private international law, it is worth mentioning the current system, and, later, the system that will be in place when the new Code of Civil Procedure comes into force.

Therefore, in the absence of special rules, the general rules set

20 MORALES, Mirta. *Un Estudio Comparativo de la Protección Legislativa del Consumidor en el Ámbito Interno de los Países del MERCOSUR*. Rio de Janeiro: Renovar, 2006. pp. 68-69.

21 ZANELLATO, Marco Antônio. “Considerações sobre o conceito jurídico de consumidor”. In: MARQUES, Cláudia Lima; MIRAGEM, Bruno (Orgs.). *Direito do Consumidor: fundamentos do direito do consumidor*. São Paulo: Editora Revista dos Tribunais, 2011. pp. 1035-1037.

22 Projeto de Lei do Senado Federal nº 281, apresentado em 02/08/2012. Dispõe sobre a reforma do Código de Defesa do Consumidor e o Comércio Eletrônico. (Available in: <http://www.senado.gov.br/atividade/materia/getPDF.asp?t=112481&tp=1>, acesso em 01/08/2015.)

23 Projeto de Lei do Senado Federal nº 282, apresentado em 02/08/2012. Dispõe sobre a reforma do Código de Defesa do Consumidor e Ações Coletivas. (Available in: <http://www.senado.gov.br/atividade/materia/getPDF.asp?t=112480&tp=1>, acesso em 01/08/2015.)

24 Projeto de Lei do Senado Federal nº 283, apresentado em 02/08/2012. Dispõe sobre a reforma do Código de Defesa do Consumidor e a Prevenção ao Superendividamento. (Available in: <http://www.senado.gov.br/atividade/materia/getPDF.asp?t=112479&tp=1>, acesso em 01/08/2015.)

forth in art. 88 of the Code of Civil Procedure, Law No. 5,869,25 of January 11, 1973, according to which Brazilian judges are concurrently competent when: the defendant is domiciled in Brazil (item I);²⁶ the obligation is fulfilled in the country (item II); and the action originates from facts or acts occurred in Brazil (item III). In other words, if the supplier is domiciled in Brazil, if the purchase of the product or service has occurred in our country, or if the service is provided in Brazil, the Brazilian judge will have jurisdiction, which restricts the hypotheses of access to justice for the cross-border consumer, especially the tourist consumer, who goes beyond national borders in search of products and services. In the same sense, consumers who enter into an international consumer agreement by electronic means, when they access a US product site and purchase imported goods directly from the foreign supplier, will also be exposed to this situation of restriction to judicial provision, if the abovementioned provisions are applied literally.

Nevertheless, considering the existence of provision in domestic law on jurisdiction for cases of civil liability for the fact of the product, national jurisprudence has accepted the forum of the state of the domicile of the consumer,²⁷ and, thus, the Brazilian jurisdiction, as

25 Law published in *Diário Oficial da União (D.O.U.)* nº 17, em 17/01/1973. Entered into effect on 01/01/1974 (art. 1.220).

26 Under this provision, case-law has shown a strong tendency to protect consumers in international consumer contracts in which the foreign element of the contractual relationship is not obvious, particularly in cases involving a breach of contract, product defect or defect or service. In these matters, the courts are holding the supplier in the distribution chain of the good in the market, since it is domiciled in Brazil. On the subject, see: a) regarding the responsibility of travel agencies for non-execution or poor service provision and damages caused by transporters, hotels and other service providers in the tourist travel course – STJ – Recurso Especial nº 291.384/RJ, judged on 15/05/2001 e Recurso Especial nº 1.102.849/RS, julgado em 17/04/2012; b) com relação à responsabilidade solidária do comerciante encarregado da venda ou manutenção do produto, por vícios do produto importado - TJ/RS – Apelação Civil nº 70.001.577.154, julgada em 22/11/2000 e TJ/RJ – Apelação Civil nº 2005.001.44.994, julgada em 18/07/2006. (KLAUSNER, Eduardo Antônio. “A proteção do consumidor na globalização”. In: TRIBUNAL DE JUSTIÇA DO ESTADO DO RIO DE JANEIRO. *Revista Jurídica*. Nº 5. 2013. p. 16. Available in: <http://app.tjrj.jus.br/revista-juridica/05/files/assets/downloads/publication.pdf>, acesso em 30/06/2014.)

27 STJ. Agravo em Recurso Especial nº 196.780/MS. “Baumer S.A. c/ Unimed Campo Grande MS Cooperativa de Trabalho Médico”. Min. Relator Ricardo Villas Bôas Cueva. Julgado em 31/10/2014. Published in: *DJe*, de 11/11/2014. Available in: <http://www.stj.jus.br/SCON/deciso/es/doc.jsp?livre=foro+e+estrangeiro+e+consumidor&&b=DTXT&p=true&t=JURIDICO&l=10&i=3>, acesso em 23/7/2015. In the same understanding, read recent judgment, in which the jurisdiction of the courts of the domicile of the consumer, in Brazil, was recognized for action for compensation for moral damages resulting from an international relation of consumption, with place of fulfillment in Santiago, Chile. (STJ. Agravo em Recurso Especial nº 518.735/MG. “Sheraton Santiago Hotel y Convention Center c/ Robervan Gomes Costa de Faria”. Min. Relator Ricardo Villas Bôas Cueva. Julgado em 12/06/2015.

being competent in the international sphere²⁸ (look for the Panasonic case),²⁹ although, in fact, this rule, foreseen in art. 101, subsection I of the CDC,³⁰ is not intended to regulate the international jurisdiction of Brazilian courts.³¹

Regarding the choice of forum, in international consumer contracts, it is important to note that the Secretariat of Economic Law of

Published in: *DJe*, de 01/07/2015. Available in: <http://www.stj.jus.br/SCON/deciso/es/doc.jsp?livre=foro+e+estrangeiro+e+consumidor&&b=DTXT&p=true&t=JURIDICO&l=10&i=1>, acesso em 23/07/2015.)

28 Critical to the application of the CDC, which includes rules exclusively for the solution of internal conflicts, to cases which are typically international, can be consulted in: KLAUSNER, Eduardo Antônio. “A globalização e a proteção do consumidor brasileiro”. In: *Revista de Direito do Consumidor*. Nº 97. Jan./Fev. 2015. pp. 78-82.

29 The Panasonic case is a leading case of Brazilian law in the field of international consumption. In it, a consumer domiciled in Brazil went to the United States, where he bought a camcorder manufactured and sold by Panasonic of this country, exclusively for its domestic market. Upon arriving in Brazil, the consumer noticed that the camcorder had a defect in its operation. By majority, the STJ condemned the Brazilian Panasonic, a legal entity distinct from Panasonic North American, to respond by the vices of the product, being the same brand of those goods manufactured in the national territory. (STJ. QUARTA TURMA. Recurso Especial nº 63.981-SP. “Plínio Gustavo Prado Garcia c/ Panasonic do Brasil Ltda”. Min. Relator Sálvio de Figueiredo Teixeira. Julgado em 11/04/2000. Published in: *DJ*, de 20/11/2000. Available in: https://ww2.stj.jus.br/processo/revista/documento/mediado/?componente=IMG&sequencial=69638&num_registro=199500183498&data=20001120&formato=PDF, acesso em 22/07/2015.) Based on this decision, the legitimacy of the consumer domiciled in Brazil was acknowledged to bring suit before the judges of his domicile against any legal entity with headquarters in the national territory that includes the same economic group of the supplier located abroad and producer of the consumer good, or against the company that uses the same trademark to identify its products, seeking the attribution of responsibility for defects and damages arising from the product or service acquired abroad. (KLAUSNER, Eduardo Antônio. “A proteção do consumidor na globalização”. *Op. cit.* p. 15.)

30 From another perspective, it is maintained that art. 101, item I of the CDC, read in conjunction with arts. 81 and 90 of the same Code, causes that, in the actions of responsibility of the foreign supplier, whose author has its consumer rights protected under Brazilian law, the jurisdiction of the Brazilian courts is exclusive, excluding any other. (LIMA, Eduardo Martins de. *Proteção do Consumidor Brasileiro no Comércio Eletrônico Internacional*. São Paulo: Atlas, 2006. p. 100.)

31 It is worth mentioning that in Brazil, both jurisprudence and doctrine accept the jurisdiction of the Brazilian courts based on art. 101, item I of the CDC, even if it is not a rule of international jurisdiction, in cases in which the consumer is domiciled in Brazil and the suit is filed before a Brazilian judge, including whether the products were purchased abroad (Panasonic case), or if the time-sharing contract has a place of fulfillment outside the country (Punta del Este case), but only if the consumer is a natural person. (FERNÁNDEZ ARROYO, Diego P. “Consumer protection in international private relations”. In: FERNÁNDEZ ARROYO, Diego P. (ed.) *Consumer Protection in International Private Relationships. La Protection des Consommateurs dans les Relations Privées Internationales*. Asunción: CEDEP, 2010. p. 678.)

the Ministry of Justice, through Administrative Rule no. 4,32 of March 13, 1998, item no. 8, was contrary to this possibility, when determining that the choice of forum in consumer relations is unfair if the forum resulting from the election is different from the one where the consumer resides.³³ Although this is a prediction for domestic jurisdiction, the doctrine and jurisprudence have maintained that the same applies to contracts with consumers that show elements of internationality. This is due to the fact that the CDC considers that access to justice (article 6, item VIII) and the facilitation of defense (articles 6, item IV and 51, item IV) are consumer rights, resulting in null and void the choice of forum clauses in the internal contracts of adhesion, and this solution should also be extended to contracts that include elements of internationality..³⁴

The abovementioned doctrinal and jurisprudential construction served as the basis for the drafting of art. 22 of the new Code of Civil Procedure, Law 13,105,³⁵ which will come into force on March 18, 2016. Thereafter, the country will have a specific rule on international jurisdiction to provide protection to cross-border consumers, as it will be facilitated by access to justice.

In this way, art. 22, item II of the new Code establishes that Brazilian judges shall have international jurisdiction when the consumer is domiciled or resident in Brazil. This special rule, in my opinion, will remove the hypotheses of international jurisdiction set forth in art. 21, which, in turn, maintained the rules already covered by the Code of Civil Procedure of 1973, referred to above, applicable to contractual and extra-contractual relations. Nevertheless, it remains to be seen whether the intention of the legislature, when drafting the special jurisdictional hypotheses provided for in art. 22, aimed at conferring protection on vulnerable subjects, would be to attribute to this article the condition of exclusive international jurisdiction - so as to exclude the jurisdiction of the foreign judge - or of competing international jurisdiction - which

32 Norma publicada no *Diário Oficial da União (D.O.U.)* nº 49-E, em 16/3/1998. Available in: http://sistemas.rei.unicamp.br/pdf/portaria-n-4-do-ministerio-da-justica-1998-aditamento-aorol-de-clausulas-abusivas-do-cdc-Attach_s437111.pdf, acesso em 25/09/2015.

33 For consumption contracts, the provisions of Supreme Court Order No. 335 of the STF, an instrument designed to standardize national case law, do not apply, which establishes that the forum choice clause is valid for contract cases.

34 MARQUES, Cláudia Lima. "Brésil". *Op. cit.* p. 65. Further, the author emphasizes the nullity of these clauses, maintaining that the jurisprudence has invalidated the clauses of election of forum included in international contracts, notably those of adhesion, concluded by consumers, individuals, domiciled in Brazil, when these lead to the determination of a foreign judge, which represents a difficulty and an abuse (article 51, subsection IV of the CDC) for access to justice for consumers residing in Brazil, a constitutionally protected right (article 5 of CF / 1988). (MARQUES, Cláudia Lima. "Brésil". *Op. cit.* p. 68.)

35 Lei publicada no *Diário Oficial da União (D.O.U.)* nº 51, em 17/03/2015.

would allow the conduct of international actions consumer before foreign jurisdiction, other than that of the consumer's domicile. In any event, I am in favor of the idea that it is a rule of exclusive jurisdiction, which is of a public international character, a measure designed to facilitate access to cross-border consumer access to judicial services.

Following this line of reasoning, art. 25, paragraph 1 of the new Code, by allowing the election of a forum in international contracts, and by excluding the jurisdiction of the foreign authority chosen, when the Brazilian judge has exclusive jurisdiction, must be interpreted on the basis of maximum consumer protection, lack of specific reference to contracts concluded by consumers. In other words, if the intention of the legislator was to facilitate access to justice for the weak juridical, the supplier can not, in an agreement of adhesion, dismiss the application of this postulate, indicating as competent a foreign judge. Therefore, the jurisdiction of the judges of the domicile or residence of the consumer can not be dismissed, and the election of forum in the international consumer contracts, celebrated in Brazil.

2.3. Applicable Law

Regarding the applicable law, it is important to point out that some doctrinal and jurisprudential currents in Brazil are not very receptive to the application of the principle of autonomy of the parties' will, although, given the development of international trade, greater acceptance of the choice of law applicable to international contracts,³⁶ mainly commercial ones.

This division of understanding is due to the inexistence of an express rule regarding it, except in the case of international commercial arbitration. Therefore, as a rule, art. 9 of the Law of Introduction to the Norms of Brazilian Law, which refers to the law of the place of celebration to qualify and govern the contractual obligations between

36 Here, it is interesting to bring to the end a *res judicata* in 2008, in which the application of the CDC was rejected, as it was not a consumption relationship, in a contract entered into between the VARIG airline and General Electric Company for the purchase of an aircraft engine in which the applicable law was chosen. In analyzing the case, the Court pointed out that once the contract law has been chosen, in a free expression of will, the agreement becomes a compromise that can not be dismissed by allegation of application in an international contract of the CDC, domestic law, under the argument that, to the contrary, would imply an offense against public order. (STJ. Corte Especial. SEC nº 646/US. "VARIG S/A Viação Aérea Rio-Grandense c/ General Electric Company". Min. Relator Luiz Fux. Julgado em 05/11/2008. Published in: *DJe*, de 11/12/2008. Available in: https://ww2.stj.jus.br/processo/revista/documento/mediado/?componente=ITA&sequencial=835111&num_registro=200600279049&data=20081211&formato=PDF, acesso em 22/07/2015.)

present.³⁷ As a result of this normative forecast, contracts concluded by consumers in Brazil, whether they are residents or consumers tourists, will, in principle, be governed by Brazilian law. On the other hand, contracts concluded by Brazilian consumers abroad will, in principle, be subject to the foreign law of the place of conclusion of the contract.³⁸

Nevertheless, it is important to note that paragraph 2 of the said article establishes that the obligation resulting from the contract is considered to be constituted in the place where the tenderer resides, for those contracts concluded between absent or remote,³⁹ this may include contracts concluded by electronic means.⁴⁰ Thus, by transposing the rule to international contracts concluded by consumers, there is an inconsistency⁴¹ contained in current Brazilian law, resulting from the lack of specific rules to protect the vulnerable part of the international consumer relationship. This is because, by virtue of the qualification contained in art. 30 of the CDC, which considers that the tenderer in consumer contracts is the supplier, there is a rule here that, if applied, determines that the law governing the international contract will be that of the State where the supplier's headquarters.⁴² In other words, the

37 At this point, it is interesting to retake the Panasonic case, to mention that the rules of conflict of the forum, especially art. 9 of the Law of Introduction to the Norms of Brazilian Law, to apply, immediately, the CDC. (Sobre o tema, ver: ZANCHET, Marília. "A proteção dos consumidores no Direito Internacional Privado brasileiro". In: *Revista de Direito do Consumidor*. Nº 62. Abr./Jun. 2007. p. 209.) Comentando o caso e destacando a tendência dos juízes brasileiros de ignorar o caráter internacional da relação jurídica para aplicar somente o CDC, Read: ARAÚJO, Nádia de. *Direito Internacional Privado. Teoria e Prática Brasileira*. 3ª ed. Rio de Janeiro: Renovar, 2006. p. 371.

38 CERQUEIRA, Fernanda Vieira da Costa. "Le régime de détermination de la loi applicable aux contrats conclus par les consommateurs en droit français et en droit brésilien". In: STORCK, Michel; CERQUEIRA, Gustavo Vieira da Costa; COSTA, Thales Morais da (Dir.). *Les Frontières entre Liberté et Interventionnisme en Droit Français et en Droit Brésilien*. Études de Droit Comparé. Paris: L'Harmattan, 2010. p. 417.

39 Valladão already warned that the rule of art. 9, paragraph 2 was a non-intelligent copy of the provisions of art. 185 of the Bustamante Code, which departs from the tradition adopted in Brazilian law and refers to the use of the connection point of the place where the contract was proposed. (VALLADÃO, Haroldo. *Direito Internacional Privado*. Vol I. Rio de Janeiro: Livraria Freitas Bastos, 1980. pp. 373-374.)

40 Regarding the form of international contracts, art. 9, paragraph 1 of the referred Law refers to the rule of *locus regit actum*.

41 As the doctrine warns, the Brazilian norm contained in art. 9, paragraph 2 is overcome, and it is necessary to choose consumer contracts, which are different from international commercial contracts, for a more consumer friendly connection. (MARQUES, Cláudia Lima. "Por um direito internacional de proteção dos consumidores: sugestões para a nova lei de introdução ao Código Civil brasileiro no que se refere à lei aplicável a alguns contratos e acidentes de consumo". In: *Revista da Faculdade de Direito da UFRGS*. Nº 24. 2004. pp. 113-114.)

42 MARQUES, Cláudia Lima. *Confiança no Comércio Eletrônico e a Proteção do Consumidor (um estudo dos negócios jurídicos de consumo no comércio eletrônico)*. São Paulo: Editora

foreign supplier, who directs his commercial activities to the Brazilian market, will have the benefit of seeing applied to the legal relationship - with foreign elements and with a vulnerable part - the right that he knows and uses in the daily .

Finally, as Cláudia Lima Marques maintains, the best solution for Brazilian law would be to adopt a flexible norm that would indicate the law of domicile⁴³ of the consumer as applicable⁴⁴ and, in addition, would allow the court to apply the law chosen by the parties in the contract only if it was the most favorable to the consumer.⁴⁵

3. REFORM DRAFTS

Although in Brazil there have been a series of attempts aimed at modernizing and updating the Law of Introduction to the Norms of Brazilian Law,⁴⁶ most of them have not even dedicated a specific provision to regulate international contracts with consumers.⁴⁷

Revista dos Tribunais, 2004. pp. 440-441.

43 Recently, Brazilian legislation was applied to decide international consumption demand, promoted in Brazil, by a consumer domiciled in the country, against a supplier based in Santiago, Chile, for damages resulting from poor service rendering. Read: STJ. Agravo em Recurso Especial nº 518.735/MG. “Sheraton Santiago Hotel y Convention Center c/ Robervan Gomes Costa de Faria”. Min. Relator Ricardo Villas Bôas Cueva. Julgado em 12/06/2015. Published in: *DJe*, de 01/07/2015. Available in: <http://www.stj.jus.br/SCON/decisooes/doc.jsp?livre=foro+e+extrangeiro+e+consumidor&&b=DTXT&p=true&t=JURIDICO&l=10&i=1>, acesso em 23/07/2015.

44 Part of the Brazilian doctrine holds that the law of the domicile or residence of the consumer should be applied when the contract is preceded by an offer or publicity made in Brazil. Thus, if the contract is preceded by an offer or publicity specifically addressed to the consumer and if in Brazil all the acts necessary to conclude the contract have been carried out, the law of the domicile or residence of the consumer is the one that has the closest links with the consumer. established business and therefore should apply. In addition, the risks must be borne by the supplier who directs his activities to the country where the consumer is domiciled using modern technologies for distance marketing. (CERQUEIRA, Fernanda Vieira da Costa. *Op. cit.* p. 418.)

45 MARQUES, Cláudia Lima. *Confiança no Comércio Eletrônico e a Proteção do Consumidor (um estudo dos negócios jurídicos de consumo no comércio eletrônico)*. *Op. cit.* p. 445.

46 For more details, read: RAMOS, André de Carvalho. “Direito Internacional Privado de matriz legal e sua evolução no Brasil”. In: *Revista da AJURIS*. Vol. 42. Nº 147. Mar./2015. pp. 106-108.

47 Refers to: a) ao Anteprojeto de Lei Geral de Aplicação das Normas Jurídicas, de 1964 by Professor Haroldo Valladão (Available in: VALLADÃO, Haroldo. *Lei Geral de Aplicação das Normas Jurídicas: anteprojeto oficial (Decretos 51.005, de 1961 e 1490, de 1962)*. Rio de Janeiro: [s/ed.], 1964); b) ao Projeto de Lei nº 4.905/1995, do Poder Executivo Nacional, originado da Comissão dirigida pelos Professores Jacob Dolinger e João Grandino Rodas, que dispõe sobre a aplicação das normas jurídicas (Available in: <http://hmjo.tripod.com/Dipr/95projetoilei.html>, acesso em 01/08/2015); c) ao Projeto de Lei do Senado Federal

It is only from 2010 onwards that the previously mentioned stance has lost its strength, taking place the need to discipline international consumer relations. In this sense, on December 22 of this year, the Senate Bill No. 166/2010 was presented to the Chamber of Deputies, which gave rise to the new Code of Civil Procedure,⁴⁸ previously commented.

Corroborating the terms of the recently adopted Code, based on the work of the Temporary Committee of Jurists⁴⁹ specially constituted to take part in the CDC modernization project, normative proposals were introduced that provide for complementary rules regarding international jurisdiction and law applicable to international consumer contracts, which were condensed into a single instrument, designed to reform the Consumer Code.

In this sense, Bill 281 on electronic commerce, presented on March 14, 2012, contemplates in the matter of international jurisdiction for the actions of contractual and extracontractual civil liability, a new wording attributed to art. 101, which opens the jurisdiction of the judge of the domicile of the consumer for the international actions in which he is the plaintiff or defendant, following, with respect to the first

nº 243/2002, de autoria do Senador Moreira Mendes, que dispõe sobre a reforma da Lei de Introdução ao Código Civil brasileiro (Available in: <http://www.senado.gov.br/atividade/Materia/getPDF.asp?t=41601&tp=1>, acesso em 01/08/2015); d) ao Projeto de Lei do Senado Federal nº 269/2004, de autoria do Senador Pedro Simon, que dispõe sobre a aplicação das normas jurídicas (Available in: <http://www.senado.gov.br/atividade/materia/getPDF.asp?t=42614&tp=1>, acesso em 01/08/2015); e) ao Projeto de Lei da Câmara Federal nº 1.782/2011, de autoria do Deputado Federal Carlos Bezerra, that disposes about art. 9º, parágrafo 2º da Lei de Introdução ao Código Civil (Available in: http://www.camara.gov.br/proposicoesWeb/prop_mostrarintegra;jsessionid=DFBD62645919FCC76F7CAD32FFC35839.proposicoesWeb1?codteor=896907&filename=PL+1782/2011, acesso em 01/08/2015). For the first projects mentioned, see: VIEIRA, Luciane Klein. "La codificación del derecho internacional privado en Brasil: los principales instrumentos legislativos y el contexto histórico". In: *Revista Electrónica ElDial. Suplemento de Derecho Internacional Privado y de la Integración*. Nº 33. Nov./2007. Especificamente sobre o Projeto nº 4.905/1995, ver: FIORATI, Jete Jane. "As inovações no direito internacional privado brasileiro presentes no projeto de lei de aplicação das normas jurídicas". In: *Revista dos Tribunais. Cadernos de Direito Tributário e Finanças Públicas*. Nº 17. Out./Dez. 1996. pp. 22-39.

48 O Projeto de Lei, finalmente aprovado em 16/03/2015, incrementa a regulação referente à cooperação judicial internacional. (Available in: <http://www.senado.gov.br/atividade/materia/getPDF.asp?t=79547&tp=1>, acesso em 01/08/2015.) About the theme read: FELDSTEIN DE CÁRDENAS, Sara L.; VIEIRA, Luciane Klein. "El derecho procesal internacional brasileño de fuente interna: análisis de la nueva propuesta de Código de Proceso Civil". In: *Revista Electrónica ElDial. Suplemento de Derecho Internacional Privado y de la Integración*. Nº 55. Sept./2010.

49 This Committee was constituted by: BENJAMIN, Antônio Herman; MARQUES, Cláudia Lima; GRINOVER, Ada Pellegrini; WATANABE, Kazuo; BESSA, Leonardo Roscoe; PFEIFFER, Roberto.

option, the criterion adopted by the new Procedural Code. In addition, it allows the consumer residing in Brazil⁵⁰ other available forums, such as the courts of the place where the contract is concluded or carried out, and the courts of the supplier. Likewise, at the end of the article, the Project inserts the possibility that the consumer may bring suit before the court judge most closely connected to the case, introducing the principle of proximity in the country. Furthermore, the normative proposal, expressly, determines that the clauses of election of forum, whether judicial or arbitral, inserted in international consumer contracts will be null and void.⁵¹

Thus, the projected standard, in the sole paragraph of art. 101, adds a rule on the law applicable to claims intended to establish the civil liability of the supplier, resulting from consumer relations, providing that disputes arising from international distance supply, the law of the domicile of the consumer or the state rule chosen by the parties, provided that it is the most consumer-friendly.⁵²

On the other hand, it is important to mention that the Project was the object of more than 31 amendments, in total, presented in the scope of the Federal Senate. Regarding the proposed changes, the need to amend the Law of Introduction to Brazilian Law Norms was introduced to insert art. 9th,⁵³ which specifically refers to the law applicable to

50 The determination that the consumer should be resident in Brazil was inserted by the Federal Senate into the text prepared by the Temporary Committee, with the justification of clarifying the privilege of the forum of consumers resident in the country, in order to avoid incongruities. (Read: FERRAÇO, Ricardo. *Parecer da Comissão Temporária de Modernização do Código de Defesa do Consumidor*. Available in: <http://www12.senado.gov.br/noticias/Arquivos/2013/12/17/integra-do-relatorio-final>, acesso em 26/06/2014.)

51 Read: “Article 101. In the action of contractual and extracontractual liability of the supplier of products and services, including in the domestic and international distance supply, without prejudice to the provisions of Chapters I and II of this Title: I - jurisdiction of the domicile of the consumer, in the demands in which the consumer residing in Brazil is defendant and that deal with consumer relations; II - the consumer residing in Brazil, in the demands in which he is the author, may choose, in addition to the forum indicated in item I, the domicile of the supplier of products or services, the place of conclusion or execution of the contract or another connected to the case; III - the clauses of election of forum and arbitration concluded by the consumer are null and void. Single paragraph. Conflicts arising from international distance supply shall be governed by the law of the domicile of the consumer, or the State rule chosen by the parties, provided that it is more favorable to the consumer, and also ensures access to justice. “

52 Notwithstanding the importance of the wording given to art. 101, at the end of 2013, Senator Valdir Raupp's Amendment No. 31 was presented, aiming to suppress the modification proposed by the article. Finally, the main amendment was rejected by other senators in early 2014.

53 In the report on the suggested modifications to the bill in question, Senator Ricardo Ferraço, as justification for the insertion of art. 9º A to the text originally presented by the Temporary Committee, maintained that the Report updates the norms governing international

international consumer contracts.

Thus, the amendment inserted on November 26, 2013, which finally added art. 9a, determines the use of the point of connection relating to the law of the State of domicile of the consumer to govern contractual relations of consumption. However, it limits the notion of consumer by restricting the scope of the article to individuals only, excluding the legal entity. As far as international supply at a distance is concerned, it provides for the application of the law of the domicile of the consumer or also allows the use of the autonomy of the parties' will to choose the applicable law, provided that the state standard chosen is the most favorable to the consumer, clearly excluding the possibility of choosing a soft law instrument to regulate the contract because of the presence of a vulnerable party. In addition, it highlights the application of the mandatory rules in force in the country, as a way to offer a minimum of protection to the cross-border consumer, when the contract has been concluded in Brazil or in the country has to be fulfilled, or if the contracting was preceded by any marketing activity directed to the Brazilian territory. Innovating in the matter of international protection of the consumer, it brings measures to govern the contracts celebrated by the tourist, qualifying the term and determining that the law of the place of celebration of the pact should be applied to the contract. Likewise, in this case, it is possible to choose the applicable law, conditioned it to select the law of the place of execution of the contract or the law of the domicile of the consumer. Finally, the amendment determines that contracts with tourism agencies or operators, concluded in Brazil, regarding international travel packages or combined with accommodation and tourism services, which are fulfilled outside the country, are governed by Brazilian law.

On March 19, 2014, the referred amendment suffered some adjustments when it was put to a vote in the Federal Senate. From then on, the normative proposal tending to insert art. 9a A to the Introductory Law referred to above reads as follows:

International consumer contracts, understood as those carried out between a consumer, natural person, whose domicile is located in a country other than that in which the establishment of the supplier of products and services involved in the

trade, foreseen in art. 9 of the Law of Introduction to the Norms of Brazilian Law, especially when it is carried out by electronic means. Therefore, according to the Senator, there is no way to disregard, in the substitutive proposal to Senate Bill No. 281, the new international dimension of consumption, otherwise the CDC and Brazilian legislation will not be prepared for the coming years and for the big sporting events that will result in the increase of the tourism in Brazil. (FERRAÇO, Ricardo. *Op. cit.*)

*contracting is governed by the law of the place of celebration or, if executed in Brazil, by Brazilian law, provided that it is more favorable to the consumer. § 1 If the contracting is preceded by any business or marketing activity, the supplier or its representatives addressed to or performed in Brazil, in particular sending advertising, correspondence, e-mails, commercial messages, invitations, prizes or offers, the provisions of Brazilian law shall apply, as long as they are more favorable to the consumer. § 2 The contracts of international travel packages or combined travel, with tourist groups or in conjunction with hotel and tourism services, with fulfillment outside Brazil, contracted with tourism agencies and operators located in Brazil, are governed by Brazilian law.*⁵⁴

As can be seen, the changes recently made have a more territorialist connotation, in that the substitution of the law of the domicile of the consumer to govern the international contract by the imposition of the criterion of the law of the place of celebration, adopted by Private International Law Brazilian, if the contract is fulfilled in Brazil, provided that Brazilian material law is more favorable to the consumer. Likewise, the provision concerning the law applicable to international distance supply was deleted, as it had already been inserted in the sole paragraph of art. 101, as well as the reference to the contracts concluded by the tourist. However, the provisions regarding the application of Brazilian mandatory rules were maintained for cases in which supply and marketing were carried out in Brazil or in Portuguese, indicating that they were addressed to the consumers domiciled therein and the forecast for package contracts of international travel or combined with accommodation and tourism services, which are met outside the country, to which *lex fori*⁵⁵ should be applied because it is the law

54 Available in: <http://www.senado.gov.br/atividade/materia/getTexto.asp?t=173020>, acesso em 26/9/2015.

55 To illustrate the normative provision, the decision of the Special Civil Court of Rio de Janeiro, which acknowledged the purchase of a tourist package to accompany the World Cup held abroad as an international contract, can be brought to the fore, to which it must be applied the Brazilian law.

(JUIZADO ESPECIAL CÍVEL DO ESTADO DO RIO DE JANEIRO. Recurso Inominado nº 1999.700.003064-2. “Exceler Agência de Viagens, Turismo e Câmbio Ltda c/ Luiz Augusto de Souza Pires”. Rel. Myriam Medeiros da Fonseca Costa. Julgado em 31/08/1999. Available in: <http://www4.tjrj.jus.br/ejud/ConsultaProcesso.aspx?N=1999.700.003064-2>, acesso em

of the place of conclusion of the contract. Moreover, as can be seen from the simple reading of the new version of the projected article, the possibility of the parties choosing the law applicable to the international consumer contract was suppressed, thereby banning the autonomy of the conflicting will.

Finally, it is important to mention that the Project, besides strengthening the principle of the application of the law more favorable to the consumer, contemplates this postulate, expressly, in the first articles destined to update the CDC, when inserts the paragraph 2º to the current art. 7 of the aforementioned norm, which imposes the application to the consumer of the norm more favorable to the exercise of his rights and claims.⁵⁶

On March 26, 2014, the final opinion of the Temporary Committee on Modernization of the CDC,⁵⁷ which contemplates the amendments suggested by the parliamentarians for the referred Project. Currently, the project is in process ⁵⁸ in the National Congress, having been approved, on September 30, 2015, within the scope of the Federal Senate.⁵⁹

4. CONCLUSION. PROSPECTS FOR THE FUTURE

As we have seen, the CDC, as it does not have normative provisions regarding the international relation of consumption, urgently needs to be reformed in this sense, as a way to offer more legal security and consumer confidence.

Although national case law has been seeking to fill existing gaps with rules that are intended to protect the vulnerable part of the contractual relationship, it is inconceivable that we do not yet have explicit rules in this regard, despite the fact that, recently the new Code of Civil Procedure provided for the international jurisdiction of the judge of the domicile of the consumer for the demands promoted by the

20/07/2015.)

⁵⁶ About the theme, read: AZEVEDO, Fernando Costa de; KLEE, Antônia Espíndola Longoni. "Considerações sobre a proteção dos consumidores no comércio eletrônico e o atual processo de atualização do Código de Defesa do Consumidor". In: *Revista de Direito do Consumidor*. N° 85. Jan./Fev. 2013. pp. 235-236.

⁵⁷ See the Final Report of the Temporary Committee for Modernization of the CDC, approved by the Federal Senate. Available in: <http://www.senado.gov.br/atividade/materia/getPDF.asp?t=147360&tp=1>, acesso em 31/03/2014.

⁵⁸ The follow-up of the project can be done in: <http://www25.senado.leg.br/web/atividade/materias/-/materia/106768>, acesso em 30/09/2015.

⁵⁹ The proposal should be voted in turn in the Federal Senate to be later sent to the Chamber of Deputies.

vulnerable party.

It is hoped that Bill No. 281/2012 can be approved, and that we will soon have express rules regarding the law applicable to international consumer contracts and international legal relationships derived from contractual and non-contractual civil liability, from the point of view of maximum consumer protection. This objective can be perfectly achieved by applying the criterion that determines the application of the law of the State of the domicile of the consumer as a minimum standard of protection and the most favorable law⁶⁰ to the latter, in the cases of election of the state law that will govern the international contract.

Ideally, the rules pertaining to international jurisdiction and applicable law could be part of the CDC, in order not to disperse the protective content contained in the diploma in question.

REFERENCES

AMARAL JÚNIOR, Alberto do. *Proteção do Consumidor no Contrato de Compra e Venda*. São Paulo: Editora Revista dos Tribunais, 1993.

ARAÚJO, Nádia de. *Direito Internacional Privado. Teoria e Prática Brasileira*. 3^a ed. Rio de Janeiro: Renovar, 2006.

AZEVEDO, Fernando Costa de; KLEE, Antônia Espíndola Longoni. “Considerações sobre a proteção dos consumidores no comércio eletrônico e o atual processo de atualização do Código de Defesa do Consumidor”. In: *Revista de Direito do Consumidor*. N° 85. Jan./Fev. 2013.

BOURGOIGNIE, Thierry. “Integración regional y la protección del consumidor en las Américas y en Europa”. In: BOURGOIGNIE, Thierry (Dir.). *Intégration Économique Régionale et la Protection du Consommateur*. Cowansville-Québec: Éditions Yvon Blais, 2009.

CERQUEIRA, Fernanda Vieira da Costa. “Le régime de détermination de la loi applicable aux contrats conclus par les consommateurs en droit français et en droit brésilien». In: STORCK, Michel; CERQUEIRA, Gustavo Vieira da Costa; COSTA, Thales Morais da (Dir.). *Les Frontières entre Liberté et Interventionnisme en Droit Français et en Droit Brésilien. Études de Droit Comparé*. Paris: L’Harmattan, 2010.

COMPARATO, Fábio Konder. “A proteção do consumidor na

⁶⁰ About the theme, read: INTERNATIONAL PROTECTION OF CONSUMERS COMMITTEE. *Final Report Sofia Conference (2012)*. Available in: <http://www.ila-hq.org/en/committees/index.cfm/cid/1030>, acesso em 24/09/2015, p. 2.

Constituição brasileira de 1998”. In: Revista de Direito Mercantil, Industrial, Econômico e Financeiro. Nº 80. 1990.

CRUZ, Carolina Dias Tavares Guerreiro. Contratos Internacionais de Consumo. Lei Aplicável. Rio de Janeiro: Editora Forense, 2006.

FELDSTEIN DE CÁRDENAS, Sara L.; VIEIRA, Luciane Klein. “El derecho procesal internacional brasileño de fuente interna: análisis de la nueva propuesta de Código de Proceso Civil”. In: Revista Electrónica ELDial. Suplemento de Derecho Internacional Privado y de la Integración. Nº 55. Sept./2010.

FERNÁNDEZ ARROYO, Diego P. “Consumer protection in international private relations”. In: FERNÁNDEZ ARROYO, Diego P. (ed.) Consumer Protection in International Private Relationships. La Protection des Consommateurs dans les Relations Privées Internationales. Asunción: CEDEP, 2010.

FERRAÇO, Ricardo. Parecer da Comissão Temporária de Modernização do Código de Defesa do Consumidor. Available in: <http://www12.senado.gov.br/noticias/Arquivos/2013/12/17/integra-do-relatorio-final>, acesso em 26/06/2014.

FIORATI, Jete Jane. “As inovações no direito internacional privado brasileiro presentes no projeto de lei de aplicação das normas jurídicas”. In: Revista dos Tribunais. Cadernos de Direito Tributário e Finanças Públicas. Nº 17. Out./Dez. 1996.

INTERNATIONAL PROTECTION OF CONSUMERS COMMITTEE. Final Report Sofia Conference (2012). Available in: <http://www.ila-hq.org/en/committees/index.cfm/cid/1030>, acesso em 24/09/2015.

JAYME, Erik. “O direito internacional privado do novo milênio: a proteção da pessoa humana face à globalização”. In: Cadernos do Programa de Pós-Graduação em Direito PPGDir/UFRGS. Edição em Homenagem à Entrega do Título de Doutor Honoris Causa/UFRGS ao Jurista Erik Jayme. Vol. I. Nº 1. Mar./2003.

JUENGER, Friedrich K. Derecho Internacional Privado y Justicia Material. México: Editorial Porrúa/Universidad Iberoamericana, 2006.

KLAUSNER, Eduardo Antônio. “A globalização e a proteção do consumidor brasileiro”. In: Revista de Direito do Consumidor. Nº 97. Jan./Fev. 2015.

KLAUSNER, Eduardo Antônio. “A proteção do consumidor na globalização”. In: TRIBUNAL DE JUSTIÇA DO ESTADO DO RIO DE JANEIRO. Revista Jurídica. Nº 5. 2013. Available in: <http://app.tjrj.jus.br/revista-juridica/05/files/assets/downloads/publication.pdf>, acesso em 30/06/2014.

KLAUSNER, Eduardo Antônio. Direitos do Consumidor no Mercosul e na União Europeia: acesso e efetividade. 2ª ed. Curitiba: Juruá, 2007.

LIMA, Eduardo Martins de. Proteção do Consumidor Brasileiro no Comércio Eletrônico Internacional. São Paulo: Atlas, 2006.

MARQUES, Cláudia Lima. “A proteção dos consumidores em um mundo globalizado: Studium Generale sobre o consumidor como Homo Novus”. In: Revista de Direito do Consumidor. Vol. 85. Jan./Fev. 2013.

MARQUES, Cláudia Lima. “Brésil”. In: FERNÁNDEZ ARROYO, Diego P. (ed.) Consumer Protection in International Private Relationships. La Protection des Consommateurs dans les Relations Privées Internationales. Asunción: CEDEP, 2010.

MARQUES, Cláudia Lima. “Por um direito internacional de proteção dos consumidores: sugestões para a nova lei de introdução ao Código Civil brasileiro no que se refere à lei aplicável a alguns contratos e acidentes de consumo”. In: Revista da Faculdade de Direito da UFRGS. Nº 24. 2004.

MARQUES, Cláudia Lima. Confiança no Comércio Eletrônico e a Proteção do Consumidor (um estudo dos negócios jurídicos de consumo no comércio eletrônico). São Paulo: Editora Revista dos Tribunais, 2004.

MARQUES, Cláudia Lima; MIRAGEM, Bruno; BENJAMIM, Antônio Herman. Comentários ao Código de Defesa do Consumidor. 2ª ed. São Paulo: Editora Revista dos Tribunais, 2006.

MIRAGEM, Bruno. Direito do Consumidor: fundamentos do direito do consumidor; direito material e processual do consumidor; proteção administrativa do consumidor; Direito Penal do consumidor. São Paulo: Editora Revista dos Tribunais, 2008.

MORALES, Mirta. Un Estudio Comparativo de la Protección Legislativa del Consumidor en el Ámbito Interno de los Países del MERCOSUR. Rio de Janeiro: Renovar, 2006.

ODY, Lisiane Feiten Wingert. “O conceito de consumidor e noção de vulnerabilidade nos países do Mercosul”. In: Revista de Direito do Consumidor. Nº 64. Out./Dez. 2007.

POCAR, Fausto. «La protection de la partie faible en droit international privé». In: Recueil des Cours de l'Académie de Droit International. Tomo 188. 1984.

RAMOS, André de Carvalho. “Direito Internacional Privado de matriz legal e sua evolução no Brasil”. In: Revista da AJURIS. Vol. 42. Nº 147. Mar./2015.

SCHMITT, Cristiano Heineck. Consumidores Hipervulneráveis. A Proteção do Idoso no Mercado de Consumo. São Paulo: Atlas, 2014.

TEPEDINO, Gustavo. “Les contrats de consommation au Brésil”. In: WALD, Arnold; JAUFFRET-SPINOSI, Camille. (Dir.) *Le Droit Brésilien: hier, aujourd’hui et demain*. Paris: Société de Législation Comparée, 2005.

TINAJEROS ARCE, Érika Patrícia. “La protección del consumidor electrónico en los países del MERCOSUR”. In: *Revista de Direito do Consumidor*. Nº 54. Abr./Jun. 2005.

VALLADÃO, Haroldo. *Direito Internacional Privado*. Vol I. Rio de Janeiro: Livraria Freitas Bastos, 1980.

VALLADÃO, Haroldo. *Lei Geral de Aplicação das Normas Jurídicas: anteprojeto oficial* (Decretos 51.005, de 1961 e 1490, de 1962). Rio de Janeiro: [s/ed.], 1964.

VIEIRA, Luciane Klein. “La codificación del derecho internacional privado en Brasil: los principales instrumentos legislativos y el contexto histórico”. In: *Revista Electrónica EIDial. Suplemento de Derecho Internacional Privado y de la Integración*. Nº 33. Nov./2007.

ZANCHET, Marília. “A proteção dos consumidores no Direito Internacional Privado brasileiro”. In: *Revista de Direito do Consumidor*. Nº 62. Abr./Jun. 2007.

ZANELATO, Marco Antônio. “Considerações sobre o conceito jurídico de consumidor”. En: MARQUES, Cláudia Lima; MIRAGEM, Bruno (Orgs.). *Direito do Consumidor: fundamentos do direito do consumidor*. São Paulo: Editora Revista dos Tribunais, 2011.