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PROTECTION OF TRANSINDIVIDUAL RIGHTS IN THE FACE OF THE CONSUMER PROTECTION CODE

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ABSTRACT

Objective: The objective of this study is to investigate the protection of transindividual rights according to the Consumer Defense Code, examining the protection of transindividual rights within the scope of the Consumer Defense Code, highlighting its relevance for the formation of a balanced consumer market and the stimulation of citizenship.

Theoretical Framework: This study is based on theoretical foundations that deal with transindividual rights and their implementation within the scope of the Consumer Defense Code (CDC). The formation of this set of norms is strongly linked to the progress of consumer law as an independent legal discipline and to the progress of collective protection modalities in the Brazilian legal system.

Method: The methodology adopted for this research comprises a bibliographic review on the main theme, using research directly related to the theme, with specific exclusion criteria.

Results and Discussion: The results obtained revealed that it is necessary to protect transindividual rights by specific legislation, considering that the consumer is usually at a disadvantage in consumer relations and the objective is economic balance. These collective demands expand the possibilities of access to justice, as well as bring legal certainty and procedural savings.

Research Implications: The practical and theoretical implications of this research are discussed, providing insights into how the results can be applied or influence practices in the field of consumer law.

Originality/Value: This study contributes to the literature by addressing a relevant topic.

Keywords: Guardianship, Collectivity, Consumer, Citizenship, Popular sovereignty.

A TUTELA DOS DIREITOS TRANSINDIVIDUAIS EM FACE DO CÓDIGO DE DEFESA DO CONSUMIDOR

RESUMO

Objetivo: O objetivo deste estudo é investigar a tutela dos direitos transindividuais de acordo com o Código de Defesa do Consumidor, examinando a proteção dos direitos transindividuais no âmbito do Código de Defesa do Consumidor, destacando sua relevância para a formação de um mercado de consumo balanceado e o estímulo à cidadania

Referencial Teórico: Este estudo se baseia em fundamentos teóricos que tratam dos direitos transindividuais e sua implementação no âmbito do Código de Defesa do Consumidor (CDC). A formação deste conjunto de normas está fortemente ligada ao progresso do direito do consumidor como uma disciplina jurídica independente e ao progresso das modalidades de proteção coletiva no sistema jurídico brasileiro.

Método: A metodologia adotada para esta pesquisa compreende uma revisão bibliográfica acerca do tema principal, utilizando-se de pesquisas relacionadas diretamente ao tema, com critérios de exclusão específicos.

Resultados e Discussão: Os resultados obtidos revelaram que se faz necessário à tutela dos direitos transindividuais por legislação específica, tendo em vista que o consumidor em regra se encontra nas relações

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consumeristas em desvantagem e o objetivo é o equilíbrio econômico. Essas demandas coletivas ampliam as possibilidades de acesso à justiça, bem como trazem segurança jurídica e economia processual.

Implicações da Pesquisa: As implicações práticas e teóricas desta pesquisa são discutidas, fornecendo insights sobre como os resultados podem ser aplicados ou influenciar práticas no campo do direito do consumidor.

Originalidade/Valor: Este estudo contribui para a literatura ao trazer um tema relevante.

Palavras-chave: Tutela, Coletividade, Consumidor, Cidadania, Soberania Popular.

LA PROTECCIÓN DE LOS DERECHOS TRANSINDIVIDUALES ANTE EL CÓDIGO DE PROTECCIÓN AL CONSUMIDOR

RESUMEN

Objetivo: El objetivo de este estudio es investigar la protección de los derechos transindividuales según el Código de Protección al Consumidor, examinando la protección de los derechos transindividuales en el ámbito del Código de Protección al Consumidor, destacando su relevancia para la formación de un mercado de consumo equilibrado. El fomento de la ciudadanía

Marco Teórico: El presente estudio se sustenta en fundamentos teóricos que abordan los derechos transindividuales y su implementación en el ámbito del Código de Defensa del Consumidor (CDC). La formación de este conjunto de reglas está fuertemente ligada al avance del derecho del consumidor como disciplina jurídica independiente y al avance de las modalidades de protección colectiva en el sistema jurídico brasileño.

Método: La metodología adoptada para esta investigación comprende una revisión bibliográfica sobre el tema principal, utilizando investigaciones directamente relacionadas con el tema, con criterios de exclusión específicos.

Resultados y Discusión: Los resultados obtenidos revelaron que es necesario proteger los derechos transindividuales a través de una legislación específica, dado que los consumidores generalmente se encuentran en desventaja en las relaciones de consumo y el objetivo es el equilibrio económico. Estas demandas colectivas amplían las posibilidades de acceso a la justicia, además de aportar seguridad jurídica y ahorros procesales.

Implicaciones de la investigación: Se discuten las implicaciones prácticas y teóricas de esta investigación, proporcionando información sobre cómo los resultados pueden aplicarse o influir en las prácticas en el campo del derecho del consumidor.

Originalidad/Valor: Este estudio contribuye a la literatura al abordar un tema relevante.

Palabras clave: Tutela, Colectividad, Consumidor, Ciudadanía, Soberanía Popular.

1 INTRODUCTION

Today's society, characterized by globalization and increased consumer interactions, faces ever greater challenges in defending consumer rights. In this scenario, the Consumer Defense Code (CDC), established by Law No. 8,078/1990, stands out as a crucial legal tool for balancing these relationships, ensuring legal certainty and effective protection for the most vulnerable party: the consumer.

Within the scope of the progress made by the CDC, the safeguarding of transindividual rights is a milestone in collective protection, as it encompasses interests that go beyond the individual and impact collectives or groups with affinities. These rights encompass diffuse, collective and homogeneous individual rights, legal concepts that seek to guarantee broad and effective access to justice.

The relevance of this strategy lies in its ability to address, in a centralized and structured manner, problems that impact a large number of consumers, such as abusive commercial practices, misleading advertising and product or service failures. However, even with a robust legal framework, considerable challenges remain in implementing these guarantees, highlighting the need for improvement and awareness-raising regarding citizens' rights.

This paper will address transindividual rights protected as Consumer Rights, also called collective, diffuse and homogeneous individual interests. Preliminarily, the work will have a brief history of consumer law to subsequently analyze the development and constitutional and legal provisions on the subject in Brazilian law.

To emphasize the fundamental objective of protecting the transindividual rights of consumers who are vulnerable and at a disadvantage, whether in the factual or legal relationship. This article will address the Consumer Protection Code, the contributions to solving conflicts arising from such relationships, the notable fragility that exists in the consumer relationship, and the macro-harm to the community.

In this way, we will analyze the parties entitled to file the action, and we will analyze some of the specific procedural provisions of the process in the protection of transindividual rights. In this scenario, the objective of this study is to examine the protection of transindividual rights within the scope of the Consumer Defense Code, highlighting its relevance for the formation of a balanced consumer market and the stimulation of citizenship. Additionally, we will discuss the existing legal instruments and the obstacles encountered to guarantee the effectiveness of these rights, with the objective of helping to strengthen consumer relations and safeguard the community.

2 THEORETICAL FRAMEWORK

2.1 CONSUMER LAW: BRIEF HISTORY

Law arises from the need for social organization. Thus, as societies develop, new rules of law emerge to regulate new social relations, “consumer law is the result of the relations of changes in the composition of society.” (ROMERO apud SERRANO, 2003, p. 11).

In the words of Miguel Reale (1979, p. 2):

> We can say, without further questioning, that law corresponds to the essential and inescapable requirement of an orderly coexistence, since no society could subsist without a minimum of order, direction and solidarity. This is the reason why the great contemporary jurist, Santi Romano, tired of seeing law conceived only as a rule or command, conceived it instead as the realization of an orderly coexistence.

For the author, the law has the power to protect society from state arbitrariness, but, at the same time, regulate social life and protect the most disadvantaged.

In the evolution of the history of Law, it is clear that it shaped a science and technique designed to bring social peace. Let's look at primitive societies, law was founded on the principle of kinship. Thus, what determined social relations was the degree of kinship and all disagreements were resolved by the head of the clan. The head of the family was the lawgiver and judge. The low complexity of relationships, especially the absence of writing, supported this model. Without any proportionality between the offender’s conduct and the penalty imposed on him.

The rules were passed down through generations through customs. During this period, families were nomadic and used to leave their places as soon as it was no longer possible to explore the land or hunt animals.

However, when man learned to raise animals for consumption, although still nomadic, families spent more time together, as there was no need to hunt. This brought technological development and, over time, people began to control the pastures, so that changes were no longer constant.

With the establishment of families in a territory, the concept of property emerged, which was defended with one's own life. Thus, the civilizations of Classical Antiquity began to emerge, such as Egypt, Babylon, Greece and Rome, the latter of which has influenced law to this day. Evidently, the principle of kinship was unable to endure with the beginning of the

development of cities, and was abandoned to make way for rules that were valid for all who lived within the community, regardless of family. (LOUREIRO Filho, 2009).

In the modern era, law became written and the classical theory of the division of powers in society separated politics from law. The neutrality of the Judiciary and written law as the main source of law emerged at this time.

In the classification developed by Norberto Bobbio, with the modern State comes a change in the way of viewing political relations, which previously centered on the figure of the sovereign, and now considers the citizen and his rights. For the author, human rights arise from an inversion of perspective, between the State and the citizens, and no longer between subjects and sovereigns.

Recognizing that the rights of a citizen of a State will give way to the recognition of the rights of a citizen of the world, as in the Universal Declaration of Human Rights. Bobbio classifies rights into four generations: First generation (represented by civil rights; the first freedoms exercised against the State); Second generation (represented by political/social rights; rights to participate in the State); Third generation (economic, social and cultural; and the most important would be that represented by ecological movements); and Fourth generation (exemplified by biological research, defense of genetic heritage, etc.).

Consumer rights, as a diffuse right, emerge as a third generation right. In this sense:

> The emergence of large urban conglomerates, of metropolises, the demographic explosion, the industrial revolution, the disproportionate development of economic relations, with mass consumer production, the birth of cartels, *holdings* , multinationals and monopolistic activities, the hypertrophy of State intervention in the social and economic sphere, the emergence of mass media, and, with them, the phenomenon of mass advertising, among other things, because they escaped man's control, often turned against him, having a negative impact on the quality of life and inevitably affecting diffuse rights. All these phenomena, which occurred in a relatively short space of time, brought to light the very reality of collective interests, which until then existed in a "latent" and unnoticed form. (FERRAZ, MILARÉ & NERY JUNIOR, 1984, p. 75).

Thus, consumer rights emerged as a result of the evolution of cities, industry and commerce. Society's recognition that consumers were vulnerable in terms of education, information, materials and legislation led to the creation of protective legislation in several countries around the world.

2.2 THE CONSUMER PROTECTION CODE AND THE NATIONAL CONSUMER RELATIONS POLICY

Articles 4 and 5 of the Consumer Protection Code establish the rules of the National Consumer Relations Policy. It is a set of programmatic standards that bring together all the guidelines, principles and objectives that must be observed and followed by all agents in the consumer market.

The author Cláudia Lima Marques explains that this normative species results from a method used by the postmodern legislator who, instead of describing conduct, chooses to establish norms that "narrate their objectives, their principles, their purposes, positivizing the legislator's objectives in the system in order to assist in the teleological interpretation and in the useful effect of the norms." (GIANCOLI, 2012, p. 47).

The rules set out in article 5 of the Consumer Protection Code establish the principles that should govern consumer relations in the country, in addition to providing for the instruments that will be used by the Public Authorities to implement this policy.

The principles on which the National Consumer Relations Policy should be based are: consumer vulnerability; the presence of the State; harmonization of interests (of consumers and suppliers); prevention of abuses (practiced by the consumer market); encouragement of self-control (between suppliers and consumers without State intervention); awareness of suppliers and consumers (of their rights and duties); improvement of public services; transparency (clarity, sharpness and sincerity); information (keeping adequately and permanently informed about the aspects of the contractual relationship) and so on.

Vulnerability is the basic principle of consumer relations. Considering that the quality or state of vulnerability means that which can be violated, hurt, harmed, offended, fragile, exposed, at a disadvantage, that which can be attacked or injured. It is important to remember that this principle does not violate the constitutional principle of equality, despite the protective and defensive treatment, it only has the effect of harmonization and equity in the consumer market. (GIANCOLI, 2012).

It can be inferred that both the Federal Constitution and the Consumer Protection Code establish the protection of consumer rights as a public policy of the Brazilian State, as well as international treaties or conventions to which Brazil is a signatory.

2.3 COLLECTIVE PROTECTION OF CONSUMER RELATIONS

The collective defense of rights is of fundamental importance in implementing the constitutional precept of access to justice.

Access to justice, according to Mauro Capeletti , is:

> System by which people can claim their rights and/or resolve their disputes under the auspices of the state. First, the system must be equally accessible to all; second, it must produce results that are individually and socially just. (1988, p. 27).

In the beginning, access to judicial protection meant the right to file and contest lawsuits and in the words of Paulo Cezar Pinheiro Carneiro:

> Although access to justice could be a natural right, natural rights did not require state action for their protection. These rights were considered prior to the state; their preservation required only that the state not allow them to be infringed by others. The state, therefore, remained passive with respect to issues such as a person's ability to recognize his or her rights and defend them adequately. (2010, p. 26).

However, with the development of States and society, especially with the industrial revolution, the State was transformed and relationships between people became more complex. These relationships became collective and no longer individual, so that even the vision of human rights was transformed.

The need for collective lawsuits is not new, as violations of transindividual rights have always occurred. The difference today is that relationships have expanded and the violations have multiplied.

Damages resulting from consumer relations, considered individually, are often minor and do not justify, from an economic point of view, that the consumer goes to court to claim this right. The protection of transindividual rights is essential to guarantee protection to the community, since the consumer finds himself at a disadvantage in the relationship in a vulnerable way. Let us take as an example the issuance of a bill by a bank, charging R$ 1.00 is a micro-injury in the individual sphere, but when collective it is a macro-injury. (NUNES, 2007).

Mauro Cappelletti and Bryant Garth in their work “Access to Justice” already highlighted the difficulties of enforcing diffuse consumer rights:

> "Diffuse" interests are fragmented or collective interests, such as a healthy environment or consumer protection. The basic problem they present—the reason for their diffuse nature—is that either no one has the right to remedy the injury to a collective interest, or the reward for any individual to seek such remedy is too small to induce him to attempt an action. Professor Roger Perrot 's recent statement on consumers aptly describes the problem of diffuse interests. (1998, p. 26).

This situation makes it difficult for the injured party to access justice and ends up resulting in illicit enrichment for the supplier.

> The tendency is for the person causing the injury to have more material and human resources and, therefore, in theory, to be better prepared for the fight, provided that he will be able to hire quality professionals and to produce evidence that is favorable to him - an inequality that is even more glaring if the injured party does not have his own resources to pay for his defense, given the material limitations of the bodies responsible for free legal aid. (MENDES, 2009, p.29).

However, when considering the damages collectively, adding up all these small amounts, there is a relevant value, both from the point of view of compensation, and in the sense of preventing new practices by the supplier.

Thus, collective protection of consumer rights not only serves to ensure access to justice, but can also guarantee the political importance of certain causes without economic value to be determined individually, as in the case of misleading or abusive advertising.

Class actions also have the power to ensure procedural and judicial savings. Given the large number of lawsuits and court decisions, the courts are overwhelmed with similar lawsuits, without a definitive solution to the case, since each person who feels harmed must file their own lawsuit.

Class actions also guarantee equality between the parties in the process, because although formally this must always exist, the fact is that, in practice, due to financial and material resources, there is a great divergence between the litigants.

Currently, there is a new way of seeing collective law, as that which goes beyond the borders of a single country. This has been a concern of the European Union and a global trend. (KLAUSNER, 2009).

Collective actions have undergone significant development since their emergence in England and the United States.

2.4 PROTECTION OF TRANSINDIVIDUAL CONSUMER RIGHTS AND LEGISLATIVE PROVISIONS

It should be noted that the Public Civil Action Law, even before the Consumer Protection Code, already provided for the possibility of consumer rights associations, as well as public law entities, to obtain a monetary conviction from suppliers for the obligation to do so.

However, this law did not specifically address consumer rights cases, and the matter was only really addressed with the entry into force of the Code. The importance of transindividual consumer protection lies, among other reasons, in the fact that it organizes the interests of the entire community and allows for the effective defense of consumer rights, whether in a diffuse, collective or homogeneous individual context. Article 2, sole paragraph, of the Consumer Defense Code provides for the collective nature of consumption.

It is important to point out that transindividual interest is the protection in a broad sense of the interest of the community, which is not classified as public or private interest, since it is not public because the State is not the holder, and it is not a common good, nor is it private, since it belongs to a group, class or categories of people who have a legal or factual bond between them. (GONÇALVES, 2008).

In this sense, we have the understanding of José Geraldo Brito Filomeno:

> Thus, in addition to the aspects already addressed in previous steps, what is at issue in the sole paragraph of article 2 of the Consumer Code is the universality, a group of consumers of products and services, or even a group, class or category of them, and as long as they are related to a certain product or service. This perspective is extremely relevant and realistic, since it is natural to prevent, for example, the consumption of dangerous or harmful products or services, thus benefiting, abstractly, the aforementioned universalities or group of consumers from the appropriate legal-procedural instruments so that they can obtain the fair and most complete compensation possible from those responsible, circumstances that are provided for in detail from article 81 onwards. (2011, p. 39).

As already explained in this research, the importance of protecting consumer rights collectively has the objective of effective protection, since, in many cases, the harm to consumer rights is not economically relevant for this harm to be individually protected by the Judiciary, and also because the traditional civil process was no longer sufficient to resolve the solutions of these conflicts, since in this the holder is determined or passive to determine, thus, the judicial defense of an indeterminable group was made unfeasible.

The provisions of the Consumer Protection Code contained in article 2, as well as the provisions of articles 81 and following, brought the possibility and the way in which consumers can be collectively defended.

> In the wake of the changes in procedural protection that have occurred in Brazilian law since the 1980s, especially with the enactment of the Public Civil Action Law, the CDC expands the means of protecting these rights according to the extent of the rights violated, whether considered individually or as a group. In this sense, when providing for consumer protection in court, the Consumer Defense Code does so considering all forms of procedural protection of the consumer. It thus prioritizes the effectiveness of consumer protection, which involves both mechanisms that guarantee the sovereign applicability of judicial decisions and facilitating access to justice for consumers. (BENJAMIN, 2011, p. 1,297).

Thus, the effective collective protection of consumer rights began with the enactment and entry into force of the Consumer Protection Code.

2.5 DIFFUSE RIGHTS

Diffuse interest is provided for in article 81, sole paragraph , item I of the Consumer Protection Code, the holder is indeterminable, has a common factual circumstance and the object is also indivisible. It is worth noting that any particular person may suffer the threat or damage. These are the rights that have the broadest transindividuality character , Example: damage to the environment. (ALMEIDA, 2011).

Rodolfo de Camargo Mancuso classifies diffuse rights as follows:

> [...] in order for the protection of diffuse interests to be effective, it is necessary to continue along this evolutionary line, tending to recognize the procedural interest based on the need to protect legitimate and socially relevant interests, when dealing with actions with a meta-individual purpose. This will eliminate the arduous task of trying to bring diffuse interests closer to subjective rights, thus avoiding the subsequent difficulties that usually arise from legal constructions that are established based on extensive analogy with “related” categories (1994, p. 50).

Cláudia Lima Marques describes diffuse rights as follows:

> Diffuse interests or rights constitute a unitary category in the conflicting universe of supra-individual interests . Essentially procedural in origin, they are those held by large groups of people who are not adequately represented by unequivocal and individualized spokespeople. Their characteristic feature is the difficulty of organizing their holders to

> bring resources or influences that are proportional and compatible with the number and fragility of the subjects who, in theory, would benefit from the organized activity and the regulation that, by overcoming dispersion, is sought to achieve. While in the public interest the organization of the entitled subjects is completely dispensable, enjoying its presuppositions of social unanimity, in the case of diffuse interests or rights, an organizational stance, although essential, is *suboptimal* and difficult to achieve. It is incorrect to equate them, whether as a mere juxtaposition of individual interests with points in common, or in the opposite direction, with possibly fragmented public interests. In such a category, something different is at stake – numerically and qualitatively – than the mere sum of the individual interests of the subjects involved. (BENJAMIN, 2010, p. 1300/1301).

Diffuse rights, because they are characterized as those in which the holders are indeterminable, are those referring to the entire community. In the case of consumer rights, the following can be cited as hypotheses of violation of consumer rights: misleading advertising and the placing on the market of products with a high degree of harmfulness or danger to the health and safety of consumers.

Dinamarco 's understanding is :

> In diffuse interests, the object is indivisible, insofar as it is not possible to protect an individual without this protection automatically affecting the other members who are in the same situation. It either affects everyone or it affects no one. (2001, p. 52-53).

In fact, the link between the holders of diffuse rights arises from a factual relationship, not a legal one, even though, for example, the prohibition of misleading advertising, although this prohibition arises from law, there is no common legal relationship that unites them to the person responsible for the misleading advertising, that is, what unites them is the fact. Furthermore, it is not possible to individually identify the holders, given the manner in which the injury is exposed, but let us look at a classic example from the doctrine: a factory that emits pollutants, putting the health of the inhabitants of a certain region at risk. It is diffuse because not only that delimited region may be exposed to the harmful effects, but also potential visitors, people who travel through that location and even people who live far away, but may be affected by pollution on days of strong winds, and if the factory is closed or an air purification device is installed, everyone will benefit (GONÇALVES, 2008).

Finally, the taxable person is the supplier, that is, those defined in article 3 of the CDC, seller, producer, distributor, trader, etc., of products or services.

2.6 COLLECTIVE RIGHTS

Collective interests are the transindividual rights provided for in article 81, sole paragraph , item II of the Consumer Defense Code, the holder is indeterminable (group, class of people), but they can be determinable, they have a basic legal relationship (contractual bond) and the object is indivisible, such as: users of the same electricity supplier, health plan policyholders when discussing the illegality of contractual clauses, etc.

It is worth remembering that collective rights are characterized by the possibility of identifying their holders, who are organized by a class and formally represented by a specific body.

According to Antonio Herman V. Benjamin, collective rights would have the following characteristics: " restricted real or essential transindividuality , determinability of subjects, external divisibility and internal indivisibility, collective availability and individual unavailability, basic legal relationship, irrelevance of social unanimity, viable optimal organization and indirect reparability". (2010, p. 1302/1303).

The transindividuality of collective law would be restricted insofar as it refers only to the members of the group or category, and not to all people as in diffuse law.

The determinability of subjects arises precisely from restricted transindividuality , since it is possible to identify each member of the group or category, but it is not necessary to characterize the collective interest.

In addition to the possibility of determining the holders of the right, it is important to emphasize that they can waive their right individually, but never the right of the group. Another important characteristic of collective rights is the basic legal relationship, that is, between the holders or with a supplier. In the first situation, we have as an example, parents and students belonging to the Parent-Teacher Association. And in the second hypothesis, we have as an example, students of the same school.

In turn, the protected object or legal asset is indivisible, as it does not belong to any particular consumer, but to all of them together and simultaneously. (NUNES, 2010).

In turn, Kazuo Watanabe says that: "this basic legal relationship pre-exists the injury or threat of injury to the interest or right of the group, category or class of people. There is no legal relationship born from the injury itself or the threat of injury." (2011, p. 73).

Therefore, since there was no legal relationship between the group's holders prior to the harmful event or threat of harm, it would not be possible to speak of collective rights.

Collective rights, as we will see below, differ from homogeneous individual rights precisely due to the existence of a basic legal relationship between their holders and the divisibility of the object in dispute.

Furthermore, it is possible to postulate the protection of more than one type of trans-individual interest in the same collective action, for example, challenging a contractual fine clause that exceeds the legal allowance.

In that regard:

> [...] there will be protection of homogeneous collective, diffuse and individual interests if the request formulated in the public civil action covers, respectively: the declaration of nullity of the clauses in the concluded contracts; ordering the supplier to refrain from including them in future contracts; and its condemnation to reimburse those who have already paid the excessive fine. (GONÇALVES, 2008, p. 12).

Finally, it should be said that the passive subject in collective rights is the supplier. And the effects of res judicata are *ultra partes,* that is, extensive to all holders who are in the basic legal situation, unlike the case in which the action is filed individually, in which the judge may accept some and not others, not to mention the numerous distributions of identical actions in the judiciary, thus hindering the speed and standardization of the judiciary and procedural economy.

2.7 HOMOGENEOUS INDIVIDUAL RIGHTS

Homogeneous individual interests are the transindividual rights provided for in article 81, sole paragraph , item III of the Consumer Defense Code, the holder is determinable, the factual situation and the object are divisible, there is a common fact that binds the holders of the violated right (single fact) such as, for example, a home financing adhesion contract, vehicles produced with the same series defect, victims of an air accident, etc. In which the passive subject is the direct or indirect cause of the damage.

According to Kazuo Watanabe (2011), the fundamental characteristics of homogeneous individual law are homogeneity and common origin. This common origin may be close or remote due to a point of fact or law.

In this connection, according to Kazuo Watanabe (2011, p. 76):

> Proximate or immediate, as in the case of a plane crash that killed several people; or remote, mediate, in the case of damage to health, attributed to a potentially harmful

> product, which may have had as its proximate cause personal conditions or improper use of the product. The more remote the cause, the less homogeneous the rights will be.

Sérgio Shimura argues that homogeneous individual rights are autonomous categories of rights. (2006, p. 30). This is also the understanding of Fredie Didier and Hermes Zaneti :

> The importance of this category is crystal clear. Without its creation by national positive law, there would be no possibility of collective protection of individual rights with a natural collective dimension due to their homogeneity, resulting from the massification/standardization of legal relations and the resulting harm. Legal fiction meets an imperative of law, to effectively deliver justice in the face of the demands of contemporary life.

The collective defense of homogeneous individual rights favors precisely this objective. Furthermore, through this defense it is possible to file lawsuits in which the amount to be reimbursed to the consumer is small when considered individually, but significant if considered collectively.

It is important to emphasize that, in Brazilian law, the use of collective action to resolve claims related to homogeneous individual rights does not depend on the demonstration of the usefulness of the collective action in the specific case. This option is given to the author of the claim, who may file an individual or collective claim, or even a joint lawsuit. It is clear that the need to demonstrate the usefulness in the specific case is contrary to the very objective of effective access to justice.

Finally, a scholar like Teori Albino Zavascki understands that homogeneous individual rights are not collective rights, but individual rights treated collectively.

> In essence and by nature, homogeneous individual rights, although collectively protectable, are still what they really are: genuine individual subjective rights. This reality must be taken into consideration when seeking to define and understand the procedural models intended for their adequate and most effective defense. (2009, p. 47).

Even though there are differences of opinion regarding the classification of homogeneous individual rights, whether collective or individual rights treated collectively, their recognition by the legislator was important, enabling their defense in court through collective actions.

In short, homogeneous individual rights are an innovation in the procedural field brought about by the CDC, given that the Public Civil Action law (Law 7,347/1985) only provided for the defense of diffuse and collective rights and interests.

2.8 FORMS OF CONSUMER DEFENSE IN COURT IN THE CONSUMER DEFENSE CODE

The Consumer Protection Code, together with the provisions of the Public Civil Action Law, constitute a microsystem of collective proceedings in Brazilian law. This means that these rules govern all collective actions.

This way:

> These microsystems demonstrate and characterize the polycentrism of contemporary law, several centers of power and systematic harmonization: the Constitution (prevalent), the Civil Code, and special laws. Thinking about recodification means imagining a residual function for the Codes that is not closed in on itself, a function that contributes to the harmonization of microsystems with the Constitution, as well as to the preservation of common legal values in the elaboration of new microsystems. (DIDIER; ZANETI, 2009, p. 46).

The Consumer Protection Code brought numerous innovations to Collective Procedural Law and is today its main source. The legislator's main concern when establishing procedural provisions in the Consumer Protection Code was to facilitate the judicialization of conflicts.

Article 83 of the Consumer Defense Code is clear in establishing the possibility of using any type of lawsuit to defend consumer rights. The Federal Constitution, in its article 5, section XXXV, ensures that any threat or violation of rights can be taken to court. Therefore, all actions provided for in our legal system are permitted, namely: knowledge actions (declaratory, constitutive, condemnatory), precautionary actions, mandatory actions, executions, collective actions, etc.

It is important to highlight that the Consumer Defense Code establishes the consumer's domicile as the competent jurisdiction (article 101, item I of the CDC), however, there is no impediment for the consumer-plaintiff to choose the forum of the defendant's domicile, and the defendant cannot oppose it.

As well as, it prohibits the denunciation of the dispute (article 88 CDC), and as for the joint litigation in collective protection by public civil action, it is active and optional, but exclusive among the legitimate competitors, to remember that the Public Prosecutor's Office, by force of article 127 of the Federal Constitution, its action and formation of joint litigation is broad and unrestricted, and as an inspector of the Law (*custos legis*), under the terms of article 92 of the Civil Code, under penalty of procedural nullity.

An important innovation brought by the Consumer Protection Code was the possibility of a generic conviction (art. 97 CDC), in this regard Gregório Almeida understands:

> Since the material object of this action is homogeneous individual rights, the conviction must always be generic; otherwise, it would make no sense, given the divisibility of the rights and interests present in the case, to have forms of collective protection for these cases. (2003, p. 374).

Therefore, due to the provision of a generic sentence, the Consumer Protection Code introduced the form of individual settlement of damages by enabling injured consumers as per (article 82 CDC).

Articles 103 and 104 of the Consumer Protection Code also contain provisions relating to res judicata in collective proceedings.

In summary, if the action is of diffuse interests and homogeneous individual interests and judged to be admissible, the effects will be *erga omnes* , within the limits of the territorial jurisdiction of the issuing body, and in the case of homogeneous individual rights, the one who has an individual demand must request the suspension of this in order to benefit from the collective demand, whereas in collective interest actions the effects are *ultra partes, limited to the group, category or class of people, but* if the action is judged to be inadmissible the effects will be *erga omnes* for the action of diffuse rights and collective action, and will be *inter partes* for the action of homogeneous individual interests. (SIQUEIRA Jr. 2011).

Furthermore, the protection of transindividual rights in view of the Consumer Protection Code as precepts (articles 84 and 6, VIII, CDC) has as positive points the effective access of the consumer to judicial bodies.

This is how João Batista de Almeida teaches:

> [...] creation of new mechanisms, such as collective action (article 91 et seq. of the CDC); procedural update of existing mechanisms, such as public civil action (articles 110 et seq. of Law No. 7,347/85); the disruption of traditional schemes in the fields of liquidation and execution of the sentence and the expansion of the effects of res judicata (articles 97/99 and 103 of the CDC) and the encouragement of the establishment of Special Civil Courts by State justice to decongest judicial bodies (article 5th, IV of the CDC). (2011, p. 222).

Finally, there is a relevant procedural aspect in the Consumer Protection Code that is not in its procedural part, but within the rules of substantive law provided for in article 6, VIII, the reversal of the burden of proof is one of the most important characteristics of the protection

of consumer rights, whether individual or collective. This reversal is carried out by the judge, who is based on two requirements alternatively: plausibility of the allegations or the consumer's insufficiency.

In general terms, collective procedural law has nuances and principles that set it apart from ordinary civil proceedings. Legitimacy is the quality to be in court, as plaintiff or defendant, in relation to a given conflict brought to the judge's attention.

The Consumer Protection Code expanded the legitimacy for filing transindividual interest lawsuits as previously provided for in the Public Civil Action Law. However, with the advent of Law 11,448/2007, this list was expanded again, given that the legislator's objective has always been to extend the legitimacy for filing the lawsuit.

According to article 82 of the Consumer Defense Code, the parties entitled to file lawsuits for diffuse, collective and homogeneous individual rights are concurrent, that is, there is no special privilege to any institution, whether public or private, any of the parties entitled to file the lawsuit, thus promoting greater effectiveness, namely: the Public Prosecutor's Office; the Union, the States, the Federal District and the Municipalities; entities and bodies of the direct or indirect public administration, even without legal personality, specifically intended to defend the interests and rights protected by this code; associations legally constituted for at least one year and that include as their institutional purposes the defense of the interests and rights protected by this code, exempt from assembly authorization.

Legitimacy is still exclusive, as only those listed in the law can propose collective actions.

From the list of the Consumer Protection Code and the Public Civil Action Law, it is clear that the legislator's intention is to expand as much as possible those entitled to file actions for transindividual rights.

3 METHODOLOGY

To achieve the outlined objectives, a qualitative bibliographic review was carried out, with the aim of interpreting and critically analyzing the academic production on the protection of transindividual rights in light of the consumer protection code.

4 RESULTS AND DISCUSSIONS

The outcomes of class actions show that the Consumer Protection Code (CDC) is a crucial tool for ensuring the protection of temporary rights. Notable cases, such as recalls of defective products and rulings against companies for abusive practices, demonstrate the effectiveness of the Consumer Protection Code in redressing collective losses.

However, the practical assessment highlights challenges in implementing court decisions, particularly in obtaining full compensation for those benefiting from collective judgments. Many consumers do not obtain compensation due to a lack of information or the lack of efficient methods to disseminate the results of the actions.

Another relevant point is the limited awareness of the population about transindividual rights and the legal instruments available to protect them. Although the CDC has strengthened the role of entities such as the Public Prosecutor's Office, Public Defender's Offices and consumer associations, the lack of social engagement reduces the effectiveness of these measures.

The slowness of the Brazilian judicial system is a recurring obstacle to the protection of transindividual rights. Complex cases involving large groups of consumers often face long processing times, which reduces the perceived efficiency of the collective protection system.

Furthermore, the lack of human and material resources in bodies such as the Public Prosecutor's Office and Procons makes it difficult to monitor and quickly resolve collective demands.

5 CONCLUSION

Consumer rights began to develop after the Industrial and French Revolutions. They are of great importance to today's society, because we live in a society in which consumption is part of everyone's daily lives, regardless of social class.

In this sense, it was necessary to protect transindividual rights through specific legislation, given that consumers are generally at a disadvantage in consumer relations and the objective is economic balance. These collective demands expand the possibilities of access to justice, as well as bringing legal certainty and procedural savings.

It is important to highlight that the Consumer Protection Code did not fail to protect the rights of socially vulnerable people, therefore, it equated the consumer, protects the community

and even the victims of the event with the purpose of harmonizing the consumer relationship and ensuring the greatest possible scope in different situations.

In this way, the aforementioned law expands the possibility of access to justice, unlike the Code of Civil Procedure, not only because everyone can benefit from a sentence, but mainly because it brings to the Judiciary abuses committed by suppliers that individually would be economically irrelevant and, therefore, would be difficult to prevent. Without forgetting the peculiarities such as the reversal of the burden of proof, the entities entitled to claim third-party rights in their own name, legal costs, generic sentence, the effects of res judicata, etc.

Thus, equal treatment and the inalienability of jurisdictional power will allow a large part of the harm to this group of people, who already suffer from a lack of information and knowledge, to be prevented, truly achieving access to justice and consequently a system of uniform judgments and a society with a better quality of life.

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