

# The Supplier's Civil Responsibility for Wasting the Consumer's Vital Time in Light of the Productive Diversion Theory

Thiago Marcos Sales Pereira<sup>1</sup>, Rosalina Alves Nantes<sup>2</sup>, Aldair Jone Almeida<sup>3</sup>, Jéferson Araújo Sodré<sup>4</sup>, Delson Fernando Barcellos Xavier<sup>5</sup>, Marcus Vinicius Rivoiro<sup>6</sup>

<sup>1,3,4</sup>Majoring in law - Federal University of Rondônia - UNIR

<sup>2</sup>Master in Administration from UNIR - Professor at the Federal University of Rondônia - UNIR

<sup>5,6</sup>PhD from UERJ - Professor at the Federal University of Rondônia - UNIR

Received: 03 Sep 2021,

Received in revised form: 05 Oct 2021,

Accepted: 12 Oct 2021,

Available online: 20 Oct 2021

©2021 The Author(s). Published by AI  
Publication. This is an open access article  
under the CC BY license  
(<https://creativecommons.org/licenses/by/4.0/>).

**Keywords— Consumer. Indemnifiable Vital  
Time. Productive Deviation.**

**Abstract—** This article takes a historical narrative approach to the theory of the consumer's productive deviation, and the duty to repair the existential off-balance sheet damage, resulting from the waste of the consumer's vital time, due to vices and defects in the consumer relationship, emphasizing its applicability from its requirements and necessary assumptions. In the course of this study, we will address Resolution no. 39/248 of 1985 of the UN, which has as its scope the consumer protection, and its guiding principles, comparing with the homeland consumer standard, the Consumer Defense Code - CDC (Law No. Law No. 8.078, of September 11, nineteen ninety). Continuing, we will approach the infra-constitutional norms that enshrine time as a protected legal asset, guaranteeing the right to reparation due to its violation, based on a constitutional filtering, taking doctrine and jurisprudence as a parameter.

## I. INTRODUCTION

It is not new that man (broad sense) longs for the extension of his existence. Humanity's object of desire is not just to increase your life span, but to increase your life expectancy with quality.

Thus, human beings have increasingly invested their productive resources, which we will later address in greater depth, to meet their needs, not just the basic ones, but those that bring them a greater sense of satisfaction, pleasure, happiness, that is, that it causes well-being.

This need to get more and more sense of well-being induced man, until then primitive, to abandon his habit of producing only for his subsistence, and start to focus on producing more than he needed, not to accumulate wealth, but so you could exchange for another product of your need. This happened as man started to live in society.

From this exchange relation of surplus production, the first relations of trade and consumption emerge.

It so happens that as consumer relations evolved, the problems, in a broad sense, of these consumer relations were also evolving, however, society, no longer primitive, no longer had the competence to resolve its conflicts through its force itself, requiring a greater intervening power that would resolve the conflicts, with the idea of replacing the will of the parties involved with the will of the judge.

With these considerations in mind, the objective of this research is to establish the relationship between the vices and defects in the consumption relationship, the obligation of suppliers to solve the problems in the consumption relationship that were not caused by the consumer, and the duty to repair the vital time wasted by

the consumer, arising from the failure of suppliers to solve the problems of the consumer relationship.

The research has a basic purpose, with bibliographic-documentary collection procedure, and uses the inductive method that starts from the observation of doctrine and jurisprudence, for the specific scenario of examining the applicability of the theory of productive deviation of the consumer, based on its requirements and necessary assumptions, and the consequent obligation to repair the waste of the consumer's vital time, as a result of vices and defects in the consumption relationship.

It has an exploratory profile that brings together procedures for surveying, analyzing and consolidating primary and secondary data obtained through a review of literature, laws and jurisprudence.

## II. BRIEF SUMMARY OF THE HISTORICITY OF TRADE AND CONSUMPTION RELATIONS

In the dawn of humanity, before man lived in society, trade did not exist, since its production was aimed at subsistence, without any focus on surplus production.

And the search for surplus production, and the realization of exchanges began with man's need to live in society, and occurred slowly and gradually.

In this tuning fork Fran Martins[5] teaches that:

At the beginning of civilization, social groups sought to suffice themselves, producing material they needed or using what they could easily obtain from nature for their survival – food, rudimentary weapons, utensils. The natural growth of populations, over time, soon showed the impossibility of this system, which is only viable in small human settlements. Then, there was the exchange of unnecessary, surplus or superfluous goods for certain groups, but necessary for others [...].

From that moment, and from the exchange relations, the first contemporary trade relations began to emerge, since the skills and abilities were not capable of supplying all of man's needs, they started to establish an exchange relation for their surplus products, so that a fisherman, for example, could exchange a portion of his surplus fish with a portion of a farmer's surplus maize production.

These “equivalent” quantities were freely agreed between the parties, according to their respective needs, but the value of each wealth or good produced was related to the amount of time and effort used in its production.

In this sense, Rainer Gonçalves[6] argues that:

From the beginnings of commercial activities, the amount of labor employed in the manufacture of a wealth or commodity was a fundamental presupposition for its

price to be determined. Therefore, the difficulty of producing a wealth or its rarity would be essential factors that would indicate its high price. On the other hand, other easily obtainable or simply manufactured goods would have a much lower valuation.

This form of relationship was efficient for the historical moment in which they lived, and it lasted for hundreds of years. However, this form of commercial exchange tended to become increasingly complex, with the involvement of multiple agents. So the most recent civilizations felt the need to adapt. From this need the first coins arise.

In a second evolutionary moment of the more contemporary consumer relations, the commercial relationship occurred, as a rule, with the physical/in-person meeting between suppliers and consumers, and eventually by telephone, through telemarketing and telesales services.

Ademarcos Almeida Porto [7], when it comes to commercial evolution due to technological ascension, argues that:

Currently, with the frightening technological development and the facilities of the digital age – especially the internet – it is possible to sell something anywhere on the planet without having to travel. This does not mean that traditional commerce, face to face, has lost its prominent place in society; on the contrary, it remains in evidence and has as its main symbol the shopping centers (the modern counterparts of the markets and stores mentioned above) that are multiplying in large cities.

The current moment stands out, when the Covid-19 pandemic came, boosting even more the e-commerce market - e-commerce, especially as a result of the numerous decrees of the 3 spheres of the executive power, determining measures of social distancing, restricting the movement of people, determining that bars and restaurants, beverage distributors, conveniences, shopping centers, and the most diverse branches of the economy, refrain from providing face-to-face service, so that the business community had to adapt, adhering/expanding the relations of consumption, by electronic/virtual means.

With the advent and expansion of the worldwide computer network, and the ease of trade arising from technological expansion, consumer relations increased exponentially, as did the problems arising from these consumer relations.

In this sense Rizatto Nunes [8] prescribes that:

Unfortunately, in times of pandemic, new abuses are seen to have emerged and the usual ones have increased. In addition, hundreds of new e-commerce companies have sprung up and the number of internet transactions has

almost doubled. These are extraordinary numbers. Consumers, who have always been quite driven and driven to consume products and services through offers made via advertising, have become prisoners of this model, as they are isolated. In addition, the web/internet and social networks started to function as an extraordinary channel of offers.

### III. ELEMENTS OF CONSUMER RELATIONS

In the words of José Geraldo Brito Filomeno[9] (2019, p.82) consumer is "... the character who in the consumer market purchases goods or contracts the provision of services, as the final recipient, assuming that he does so with a view to meeting a need own..."

The Consumer Protection Code, on the other hand, deals with consumer concepts, in the caput of art. 2, as "... every individual or legal entity that acquires or uses a product or service as a final recipient", as well as a supplier, as per the head of art. 3rd, being this:

... every individual or legal entity, public or private, national or foreign, as well as non-personalized entities, that carry out production, assembly, creation, construction, transformation, import, export, distribution or commercialization of products or services.

Flavio Tartuce[10] explains that " The word supplier is in a broad sense, encompassing the supplier of products - in a strict sense - and the service provider ", further clarifying that "suppliers or providers may be legal entities governed by Public Law or Law Private. Among the first, the public services that are covered by the CDC deserve to be highlighted, including specific treatment in its art. 22".

From the concepts presented, we can deduce that a consumer relationship is the one established between a consumer and a supplier, linked by a product or service. These are objective requirements that must exist. It is, therefore, a sine qua non condition.

In this sense Leonardo de Medeiros [11] teaches:

[...] we observe that the elements that make up the consumption relationship are consumer and supplier, negotiating a product and/or service. It is important to emphasize that the consumption relationship always requires the presence of the consumer and the supplier; product and/or service. In other words, if any of the elements are missing, there will be no consumption relationship.

### IV. CONSUMER PROTECTION AT THE INTERNATIONAL SCOPE

In item 2 of this study, we address as a result of the advent and expansion of the internet, and of electronic

commerce, was the exponential growth of consumer relations.

It must be recognized that, as a result of this expansion, international consumer relations, which previously took place primarily between local suppliers and the tourist consumer, have also undergone an exponential increase, so that it is necessary to investigate whether there are international standards for consumer protection, and the protective focus of these eventual norms.

In the international field, we highlight Resolution n. 039/248 of April 16, 1985, which establishes international guidelines for consumer protection, permeated by objectives, and guiding principles.

The caput of art. 1 of Resolution n. 039/248, which has consumer protection as its scope, recognizes, in free translation, that "...consumers often face imbalances in economic terms, educational levels and bargaining power and bearing in mind that consumers must have the right of access to non-dangerous products..." (UN, 1985)

Of the objectives of the international standard, I highlight those provided for in subparagraphs c, def, in verbis :

(c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;

(d) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;

(f) To further international co-operation in the field of consumer protection;

These objectives include the pursuit of high levels of ethical conduct from suppliers (c); the coercion of abusive commercial practices by suppliers, both in domestic and international consumer relations (d); and also international cooperation with regard to consumer protection (f).

As for the guiding principles of the international standard, it is imperative to list all the provisions present, which I now list:

(a) The protection of consumers from hazards to their health and safety;

(b) The promotion and protection of the economic interests of consumers;

(c) Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs;

(d) Consumer education;

(e) Availability of effective consumer redress;

(f) Freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision-making processes affecting them.

When addressing Resolution n. 039/248 UN, Paula Santos de Abreu[12] explains these principles, teaching that:

...the UN General Assembly edited resolution n. 39/248 of 10/04/1985 on consumer protection, affirming the principle of vulnerability at the international level. The guidelines constituted a comprehensive model describing eight areas of action for States to provide consumer protection. Among them: a) protection of consumers against risks to their health and safety, b) promotion and protection of the economic interests of consumers, c) access of consumers to adequate information, d) consumer education, e) possibility of compensation in the event of damage, f) freedom to form groups and other consumer organizations and the opportunity for these to present their views in decision-making processes that affect them. These guidelines provided an important set of internationally recognized core objectives, designed especially for developing countries to help them structure and strengthen their consumer protection policies.

Still on the law of consumer relations, at the international level, we can highlight the Treaty on the Functioning of the European Union (TFEU) - Treaty on the Functioning of the European Union in literal translation, which lists 5 consumer rights, and treats them as fundamental rights, as Jana Valant teaches[13]

The Council adopted its first special program for consumer protection and information policy in 1975,9 where it defined five fundamental consumer rights: the right to protection of health and safety, the right to protection of economic interests, the right to claim for damages, the right to an education, and the right to legal representation (or the right otherwise to be heard). This program (together with its successors) has served as a basis for an ever corpus of directives and growing regulations in the area of consumer protection.

For the author, the 5 fundamental rights established by the Council of the European Union would have as scope the protection of safety and health (1); protection of economic interests (2); The right to claim compensation for damages arising from the consumer relationship (3); the right to education, in the sense of clear information to the consumer (4); and what the author called the right to be heard or representation (5).

These fundamental rights, described by the author, would be part of a set of consumer protection tools, the first tool being European Union legislation, the second

would be tools to assess, monitor and improve consumer protection, subdivided into 3 sub-items, namely: a) Market monitoring tools; b) Awareness-raising tools; and c) Tools for stepping up enforcement and redress (Tools to intensify the application and obtain redress).

Still on the European Union, Cláudia Lima Marques [14] teaches that:

The European Union has always been concerned with ensuring a system of transactions in the internal market that would enable these "integrated international" negotiations and contracts to guarantee security and adequacy for consumers. The free circulation of products, services, capital and people allows these transactions to multiply and it is the objective of the consumer protection policy that these can happen in the best possible way.

Thus, even at the international level, the vulnerability of the consumer is recognized and protected, in order to minimize the existing disparity between suppliers and consumers.

## V. CONSUMER PROTECTION WITHIN THE INTERNAL SCOPE

Consumer protection, in the current internal legal order, in addition to having a constitutional nature, is in the strict part of the constitution, which deals with fundamental rights and guarantees, listed in item XXXII, of art. 5 of the Federal Constitution, in verbis :

Art. 5. Everyone is equal before the law, without distinction of any kind, guaranteeing Brazilians and foreigners residing in the country the inviolability of the right to life, liberty, equality, security and property, in the following terms:

XXXII - the State shall promote, in accordance with the law, consumer protection; (Brazil, 1988)

Notwithstanding the aforementioned protection, the constitution strengthens consumer protection sparsely by the constitution, attributing to the Union, the States and the Federal District, concurrent competence to legislate, according to the intelligence of Art. 24, item VIII, regarding the "... . liability for damage to the environment, to the consumer, to goods and rights of artistic, aesthetic, historical, tourist and landscape value".

It also establishes the constitutional norm, as one of the principles of the economic order, consumer protection. This is provided for in the caput of Article 170, in conjunction with its item V, but let's see:

Art. 170. The economic order, founded on valuing human work and free enterprise, is intended to ensure a



dignified existence for all, in accordance with the dictates of social justice, observing the following principles:

V - consumer protection;

The concern with consumer protection, already expressed in the core of the constitution, was enshrined when the constituent set a period of 120 (one hundred and twenty) days for the National Congress to prepare the Consumer Protection Code, pursuant to article 48 of the Act of the Transitional Constitutional Provisions.

According to Cláudia Lima Marques and Laís Bergstein [15] explain

Still at the constitutional level, the fact that art. 24, VIII, CRFB, attribute concurrent legislative competence to the Union, the States and the Federal District to legislate on liability for damages to the consumer. This is a useful forecast insofar as consumer relations have both local and diffuse effects – and the legislative collaboration of all these entities favors the expansion of consumer protection in the market.

The Consumer Defense Code came to implement art. 5th, XXXII of the Constitution by posing as objective as intelligence caput Art. 4th, “ ... meeting the needs of consumers, respecting their dignity, health and safety, protecting their economic interests, improving their quality of life, as well as the transparency and harmony of consumer relations. .. ”, expressly bringing in its core, the Principle of Consumer Vulnerability, expressed in item I, of art. 4th.

According to José Geraldo Brito Filomeno[16] we must understand consumer vulnerability as “ ...the fragility of consumers, vis-à-vis suppliers, either with regard to the economic aspect and purchasing power, or with regard to the so-called information provided by the supplier or still technical ”.

The disparity of weapons between consumers and suppliers in the consumer relationship is clear, when the legislator establishes legal instruments for the execution of the national policy on consumer relations, expressed in the items of art. 5th, otherwise let's see:

Art. 5 For the execution of the National Consumer Relations Policy, the public authorities will have the following instruments, among others:

I - maintenance of full and free legal assistance for needy consumers;

II - institution of Consumer Defense Justice Prosecutors, within the scope of the Public Ministry;

III - creation of police stations specialized in assisting consumers who are victims of criminal consumer offenses;

IV - creation of Special Small Claims Courts and Specialized Courts for the solution of consumer disputes;

V - granting incentives for the creation and development of Consumer Protection Associations.

## VI. CONSUMER PROTECTION INSTRUMENTS

It should be noted that the first instrument that enables the execution of the national policy on consumer relations is Free Legal Assistance, and it could not be different. What would be the sense of creating a protective norm, to an agent known to be weak and vulnerable, if there was no instrument capable of guaranteeing the recipient of the norm, the search for the implementation of the protective norm?

Citizenship is the full exercise of rights. It can be conceptualized as the exercise of rights and duties inherent to the responsibilities of a citizen.

It is not for any reason that the Magna Carta promulgated in 1988 is nicknamed “ Citizen Constitution ”. In its preamble, the Original Constituent Power makes it clear that the current constitution is intended to “ ...ensure the exercise of social and individual rights, freedom, security, well-being, development, equality and justice as supreme values of a fraternal, pluralistic and unprejudiced society... ”. (Brazil, 1988)

Based on these ideals, the Fundamental Principles of the Federative Republic of Brazil were followed, including citizenship and human dignity, pursuant to Article 1, items II and III, “ in verbis ”

Art. 1 The Federative Republic of Brazil, formed by the indissoluble union of States and Municipalities and the Federal District, constitutes a Democratic State of Law and has as its foundations:

II - citizenship;

III - the dignity of the human person; (Brazil, 1988)

A citizen is anyone who is in full enjoyment of their civil, political and social rights, basic rights protected by the State, and intertwined with the principle of human dignity.

The exercise of citizenship is not limited to the right to vote and be voted. In order for the full exercise of citizenship to occur, citizens must, in addition to exercising their political rights, be aware of other rights and have the means to pursue them.

In Brazil, we have a widespread common sense that “ justice is only for the rich ”.

This common sense needs to be vigorously fought, as the Federal Constitution lists citizenship as a fundamental

principle and, in theory, presents means of guaranteeing this fundamental principle, such as free justice and free legal assistance, to those who prove their insufficiency of resources.

The other instruments for implementing the National Consumer Relations Policy will be through a positive provision of the State, for the creation of public bodies, in the broad sense, and for the promotion of the creation of associations, both in consumer protection.

These instruments are necessary for the consumer to be able to demand that the State exercise its jurisdictional Power-Duty, in order to solve its conflicts, and in the final analysis, they are conditions without which the consumer will not be able to fully exercise his citizenship.

## VII. JURISDICTION, RIGHT OF ACTION, AND LEGAL ASSISTANCE AS A FORM OF EXERCISING CITIZENSHIP

Jurisdiction comes from the Latin *Jurisdictio*, *juris* = law, and *dictio/dicere* = to say. Therefore Jurisdiction, etymologically, means to say the right.

In primitive societies, the parties sought the solution of their conflicts, according to their will, and by their own means, without the mediation or intervention of a higher hierarchical power, both for the declaration or not of the existence of a right, and for the satisfaction of the resisted claim. This way of resolving a conflict is known as self-protection or self-defense. Thus, whoever had an interest in a particular good in life, would seek it through physical strength. In short, force was used by an "individual" to the detriment of another "individual", as a way of superimposing any resistance, with the purpose of satisfying an individual claim, using the "law of more" at certain times. strong", or in the popular way known as "justice in their own hands", legally known nowadays as an arbitrary exercise of their own reasons, an institute that, as a rule, is prohibited by the current Brazilian legal system, including typified in the penal code, under the terms of the Art. 345 of Decree Law 2848/40, "in verbis";

Art. 345 - To take justice into their own hands, to satisfy a claim, albeit a legitimate one, except when the law allows it:

Penalty - detention, from fifteen days to a month, or fine, in addition to the penalty corresponding to violence. (Brazil, 1940)

With the emergence of the Contemporary Modern State, the State took upon itself the capacity to decide social conflicts, giving rise, at that moment, to the power-duty of jurisdiction.

The doctrine conceptualizes jurisdiction as one of the forms of composition of conflicts, with jurisdiction being the power-duty of the State, consisting in the substitution of the will of the parties.

Jurisdiction is, therefore, one of the functions of the State, personified by a legally invested agent - Judge, and seeking to resolve the conflict impartially, it replaces the will of the holders of the right, or interests, presented in the dispute.

Diogo Assunção[17] argues that:

[...] the jurisdiction has as its ultimate purpose social pacification and consists of a power-duty of the State, because, if on the one hand it corresponds to a manifestation of the sovereign power of the State, imposing its decisions in an imperative way, on the other hand it corresponds to a duty that the State assumes to settle any conflict that may be presented to it.

Power is said because the State, when provoked to resolve conflicts, has the power to decide according to the legal system, replacing the will of the parties. This decision must be complied with voluntarily and in good faith, and in case of non-compliance, the State may, by force, enforce its compliance.

In addition, duty is said, because the State, when provoked, cannot refrain from resolving the conflict, even if this is eventually not covered by the national legal system. This stems from the constitutional principle of the right to action, and the Inevitability of jurisdiction, provided for in article 5, XXXV of the Federal Constitution of 1988, providing that "the law shall not exclude from the Judiciary Power's assessment any injury or threat to rights". (BRAZIL, 1988)

To Wadi Lammêgo[18] :

Through this principle, everyone has access to justice to claim preventive or reparatory jurisdictional protection for injury or threat of injury to an individual, collective, diffuse, and even homogeneous individual right. It is, therefore, a subjective public right, arising from the state assumption of administration of justice, granted to man to invoke the jurisdictional provision, in relation to the conflict of interests qualified by an irresistible claim.

After the assimilation of this jurisdictional function, the State was bound by the obligation to decide in any disputes that were presented to it, and cannot, therefore, exempt itself from the responsibility to decide.

BARROSO (2012, p. 95) argues that:

Once the state monopoly of jurisdiction was instituted, the power of the state gave rise to the duty to resolve disputes. And every duty is reflected in the emergence of a

subjective right in favor of those who can demand its observance. This right to demand from the State the solution of conflicts of interest can be defined as a right to exercise and obtain jurisdictional protection, which is precisely the action.

The action, therefore, is a subjective right of the aggrieved party, to demand from the State, the jurisdictional provision in the solution of that conflict. It is not characterized by the State's requirement to enforce its will, but rather by requiring the Judge State to apply the legal system in force in that particular case.

At a given time, the State took upon itself the role of solving conflicts, giving rise to the duty to protect the legally protected assets of life, and consequently gives rise to the subjective right of those who, in case of injury, or threat of injury, to these assets legal, provoke the state.

Now, what would be the applicability of these norms, which were formally born of full effectiveness, if the State did not also have a guarantee for those who were economically under-sufficient? What would be the use of a constitutional norm, guaranteeing me the right to provoke the State to resolve my conflict, if I was not also guaranteed a means to provoke it?

The above questions are answered in the wise words of Ticiano Alves e Silva[19] by saying that:

Not assisting those who do not have the resources to go to court, abandoning them, is the same as denying them legal protection. The laws would be of no use if, in the face of a violation, the poor were not allowed to obtain state jurisdictional protection and the reestablishment of the violated legal order. The fundamental right to equality would be attacked in the hypothesis.

Without the completeness of these conditions, access to justice would not be protected, as this, in the words of Alexandre Fernandes Dantas[20], corresponds to the "[...] system by which people can claim their rights and/or resolve their disputes under the auspices of the State."

Thus, free legal aid is, therefore, a requirement for validity and effectiveness, for exercising the right to action, and, consequently, for exercising citizenship itself.

### VIII. TIME AS WELL AS LEGAL PROTECTED?

When it comes to time, so that there is a duty to repair, it is necessary to verify whether time would be a protected legal asset, so that the violation of this legal asset may result in the duty to repair.

Time is a limited asset in human life. This does not stop in the interest of the owner of the property, it does not accumulate, nor does it recover.

Although time has these characteristics, it cannot be inferred that, in the legal sphere, it is a protected legal asset. It is necessary to find sources of law, whether positive norms, principles, doctrines, or even the recognition of this protection in the jurisprudential sphere.

In the normative sphere of the principles, we can infer that time is considered a protected legal asset, of such importance, that the original constituent chose to treat it, albeit implicitly, in the list of fundamental rights. This is provided for in item LXXVIII, of article 5 of our Charter, known as the principle of reasonable duration of the process, which guarantees "all, in the judicial and administrative scope, the reasonable duration of the process and the means to guarantee the speed of processing." (Brasil, 1988)

From the reading of Decree no. 6,523/2008 (known as SAC Law) we can observe that there is a concern with time, according to the intelligence of §4, of art. 4, by expressly stating that "Specific regulations will address the maximum time necessary for direct contact with the attendant, when this option is selected." (Brazil, 2008)

In the labor sphere, we have several texts, Decree Law n. 5.452/1943, which protect time, such as chapter II, section II, from art.58 to 65, which deal with the working day (in hours), or even Section III, which deals with rest periods (in hours), and also Article 457, which fixes the remuneration at the time the employee is available to the employer and renders his services to him.

It is worth noting that there are already numerous judgments recognizing time as a protected legal asset, so that its violation deserves redress, but let's see:

DECISION: AGREE the Judges who are members of the Tenth Civil Chamber of the COURT OF JUSTICE OF THE STATE OF PARANÁ, by unanimous vote, to hear and grant the appeal, with Judge Luiz Lopes, with separate vote, as he arbitrates the pain and suffering to a greater extent. SUMMARY: CIVIL RESPONSIBILITY. CONSUMER RELATIONSHIP. CONDUCT REITERATED BY THE BANKING INSTITUTION. IT TAKES ONE HOUR AND TWENTY-FIVE MINUTES IN ONE DAY, IT TAKES TWENTY-EIGHT MINUTES TEN DAYS IN ANOTHER. DELAY IN CUSTOMER SERVICE. APPLICATION OF ART. 14 OF THE CDC. STRICT RESPONSIBILITY. NO PROOF OF EXCLUDING CAUSE. DUTY TO INDEMNIFY CONFIGURED. MORAL DAMAGE. QUANTUM INDEMNITY FIXED AT R\$ 10,000.00 (TEN THOUSAND REAIS). INTEREST AND INFLATION. INITIAL TERM. DATE OF JUDGMENT. APPEAL KNOWN AND PROVIDED. (TJPR - 10th Civil Code - AC - 1239964-9 - Metropolitan Region of Londrina -

Central Forum of Londrina - Reporter: Arquelau Araujo Ribas - By majority - - J. 01.29.2015)(TJ-PR - APL: 12399649 PR 1239964-9 (Judgment), Rapporteur: Arquelau Araujo Ribas, Judgment Date: 01/29/2015, 10th Civil Chamber, Publication Date: DJ: 1523 03/11/2015)"

In the same vein, the collegiate bodies of the Court of Justice of the State of Rio de Janeiro have been accepting this theory.

CIVIL APPEAL. ELECTRICITY. RIGHT. OF THE CONSUMER. ACTION OF OBLIGATION TO MAKE CUMULATIVE WITH A REQUEST FOR COMPENSATION FOR PAINAL DAMAGES DUE TO THE DRAWING UP OF TOI. SENTENCE OF ORIGIN. DEFENDANT'S APPEAL SUPPORTING THE LEGALITY OF THE BILLINGS. FAILED TO PROVIDE CONFIGURED SERVICES. CONCESSIONAIRE THAT DID NOT UNDERTAKE ITS PROBATORY BURDEN.

APPLICATION OF PRECEDENT 256 OF THIS COURT. MORAL DAMAGE CONFIGURED. APPLICATION OF THE PRODUCTIVE DEVIATION THEORY. APPEAL DENIED. (TJRJ. CIVIL APPEAL No. 0006551-97.2020.8.19.0031. TWENTY CIVIL CHAMBER. Rapporteur Judge Renato Lima Charnaux Sertã. Judgment Date: 06/16/2021 - Publication Date: 06/17/2021)

And still:

CIVIL APPEAL. CONSUMER RIGHT. ACTION FOR CONTRACT TERMINATION C/C REQUEST FOR INDEMNITY FOR MATERIAL AND PAINAL DAMAGE. REAL ESTATE DEVELOPMENT. PURCHASE AND SALE OF LOT OF LAND IN CONDOMINIUM UNDER CONSTRUCTION. TERMINATION INTENDED ON CHANGE IN THE FINANCIAL CONDITION OF THE AUTHOR. DEFENDANT'S ALLEGATION OF REFUSAL. JUDGMENT OF PARTIAL ORIGIN. IRRIGATION OF THE DEFENDANT. Consumer relationship. The existence of an irrevocability and irreversibility clause does not preclude unilateral termination by prospective buyers. In fact, Law no. 13,786/2018 disciplined the termination of the contract by the purchaser of a real estate unit in real estate development and in urban land subdivision. Although it is not applicable to the specific case, since the contract in question was signed on a date prior to the validity of the aforementioned rule, it cannot be forgotten that the legislator did not make any consideration regarding the impossibility of termination in such cases. According to the STJ's consolidated understanding (Precedent 534) "in the event of resolution of a property purchase and sale agreement submitted to the Consumer Protection Code, the installments paid by the

promising buyer must be immediately refunded - in full, in case of sole fault of the promising seller/builder, or partially, if it was the buyer who caused the cancellation". Refund of amounts correctly determined. With regard to legal amendments, the appellant has a partial reason. In fact, regarding the initial term of interest incidence, the STJ, at the time of the judgment of REsp No. 1,740,911/DF, submitted to the rite of repetitive appeals (Topic 1002), established the thesis that "In purchase and sale commitments of real estate units prior to Law No. 13,786/2018, in which the termination of the contract is claimed at the initiative of the promising buyer in a manner different from the agreed penalty clause, the default interest is levied from the final judgment of the decision.", which it is exactly the hypothesis of the case file. Reform of the sentence in this regard. In relation to the monetary correction of the installments paid, the judgment does not deserve any correction, since it determined its incidence from each disbursement, being in line with the jurisprudence of the STJ and this Court of Justice. Precedents. Moral damage. It is extracted from the body of evidence that the defendant tried several times to obtain the dissolution administratively. The defendant's refusal to accept the request for termination of the contract even though it is aware that, under the terms of the jurisprudential understanding consolidated in the Courts, it is the buyer's potestative right, constitutes a failure in the provision of the service to give rise to the duty of reparation. Consumer Productive Deviation Theory. Amount arbitrated by the lower court in R\$5,000.00 (five thousand reais) that is reasonable and proportional to the peculiarities of the specific case. Fees for loss of suit. Fixing equitably. Impossibility. The guidance of the STJ was established in the sense that it is mandatory to apply the limits established in art. 85, §2, of the CPC. Precedents. Judgment that reforms in part. Maintenance of the minimum loss of suit of the plaintiff. Hypothesis that includes appeal fees. Art.85, §11, of the CPC. PARTIAL PROVISION OF THE APPEAL. (TJRJ. CIVIL APPEAL No. 0008614-66.2018.8.19.0031. TWENTY CIVIL CHAMBER. Rapporteur Judge Andre Emilio Ribeiro Von Melentovytsch. Judgment Date: 06/15/2021 - Publication Date: 06/17/2021 )

Thus, we can infer that time is an individual legal asset that, therefore, deserves state protection, and any damages may give rise to the duty to repair.

## IX. CIVIL LIABILITY

Before (attempting) to conceptualize civil liability, it is imperative to present some doctrinal concepts, of which I highlight:



To Caio Mário da Silva Pereira[21] , civil liability

[...] consists in the realization of the abstract reparability of the damage in relation to a taxpayer of the legal relationship that is formed. Reparation and taxable person make up the binomial of civil liability, which is then enunciated as the principle that subordinates reparation to its incidence on the person causing the damage.

While for Gustavo Tepedino[22] , civil liability

[...] it gradually ceases to be linked to the punishment of the offending agent, and becomes related to the elementary principle that the unjust damage, thus understood as the injury to a legal interest deserving of protection, must be repaired, enshrining the function principle that came to be attributed to the institute: the patrimonial reparation of the damage suffered.

Flávio Tartuce[23] shares Álvaro Vilhãça Azevedo's definition, so that civil liability “[...] is present when “the debtor fails to comply with a precept established in a contract, or fails to observe the regulatory system, which regulates life . Civil liability is nothing more than the duty to indemnify the damage ” ( )

Also about civil liability, as taught by Eduardo Abílio Diniz[24] , this is

[...] the legal duty arising, also called derivative/successful or, still, secondary, which arises or derives/succeeds (therefrom or derived/successful) from non-compliance with an obligation, which, in turn, is a duty original or primary legal responsibility (hence civil liability is also a secondary legal duty)

Thus, regardless of the divergences of the aforementioned doctrines, basically civil liability consists of the duty of the agent causing the damage, to repair any damage to the legal interest protected by the alleged victim, in order to fully indemnify, reimburse, or compensate for the damage borne by the victim, namely, of restoring the victim to the status quo ante bellum[25] , or to repair the damage.

In consumer relations, as a result of the consumer's vulnerability, compared to the supplier, as a rule, the supplier's civil liability is objective, that is, it does not depend on the proof of intent or guilt, but only on the agent's conduct, the causal link, and the harmful result.

It is said as a rule, since this rule admits exceptions, they are those excluding civil liability, namely, a) Act of God and force majeure; b) state of danger; c) self-defense; d) regular exercise of rights; e) strict compliance with legal duty; and f) the victim's sole fault.

### 9.1. The agent's conduct

Paraphrasing Professor Eduardo Abílio[26] , human conduct is the subjective element of civil liability, since it is associated with the active subject of the harmful result.

With the exception of the incidence of causes excluding civil liability, namely, a) Act of God or force majeure; b) state of danger; c) regular exercise of the right; d) strict compliance with legal duty; and e) the victim's exclusive fault, human conduct, which results in damage, may imply the duty to repair.

### 9.2. The Causality Nexus

The causal link, prima facie, is to establish the relationship and cause and effect between human conduct, lato sensu , and harmful result borne by the victim.

It would, therefore, be the link between the potentially or effectively harmful result infringed on the victim, and the conduct presented by the supposed recipient of the duty to repair.

In this sense Gustavo Tepedino[27] explains that “[...] the causal link fulfills a double function: on the one hand, it allows determining to whom the harmful result should be attributed; on the other hand, it is essential in verifying the extent of the damage to be indemnified, as it serves as a measure of indemnity ”.

### 9.3. of the damage

The damage, according to Professor Eduardo Abílio[28] " [...] it is the violation of the respective victim's property, whether this material property, also called patrimonial, or immaterial, also called off-balance sheet, or non-patrimonial ". According to the Civil Code[29] of 2002, “the one who, through an unlawful act (arts. 186 and 187), causes damage to others, is obliged to repair it ”, this is provided for in the caput of art. 927 of said codex.

This standard must be combined with art. 186 and 187 respectively, namely:

Art. 186. Anyone who, by voluntary action or omission, negligence or recklessness, violates law and causes damage to others, even if exclusively moral, commits an unlawful act.

Art. 187. The holder of a right that, when exercising it, manifestly exceeds the limits imposed by its economic or social purpose, by good faith or good customs, also commits an unlawful act. (Brazil, 2002)

Only the combination of these three infraconstitutional provisions, associated with the intelligence of items V and X of Article 5 of the Federal Constitution, allow us to infer that those who, by action or omission, or abuse of rights, injure a protected legal asset, will be obliged to repair it, being the possibility of filing a civil redress action, a

subjective right of the victim, who may or may not exercise it within the legal term.

It should be noted that the duty to repair any damage is associated with the conduct of one or more agents, whether commissive or omissive, and with a potentially or effectively harmful event, as well as the existence of a causal link between the conduct of ( s) agent(s), and the harmful result.

## X. PRODUCTIVE RESOURCES OF THE CONSUMER

According to Dr. Marcos Dessaune[30] the consumer has some features, highlighting the following features:

...vulnerable natural resources, which are air, water and other goods in common use...; abstract cognitive resource, which is your consciousness; vulnerable vital resources, which are your psychic and physical balance; limited productive resources, which are your time and skills (set of knowledge or knowledge, skills or know-how and attitudes or know-how) necessary for the performance of any activity ; scarce material resources, which are their economically useful material goods; and conditioned volitional resource, which is their freedom – understood here as “the possibility of choice”.

The author clarifies that this individual time available to each consumer, which he lists in the list of limited productive resources - in the sense of being finite, of not being cumulative - is the same as vital, or even existential, time that the author lectures from as follows:

... under the ontological focus, it is the implicit support of human existence, that is, it lasts for a certain time and develops within it. In other words, the total lifetime of each person is an individual finite good; it is personal capital that, through free and voluntary choices, can be converted into other material and immaterial goods, which can only be disposed of according to one's own conscience. In economic terms, it is a limited productive resource – [...] which cannot be accumulated or recovered throughout people's lives... (DESSAUNE, 2017, p.365)

Other productive consumer resources, as described by the author above, are competences, the author explaining that we must understand by competences, the knowledge acquired by the consumer in the course of his life, the skills developed and improved, and the attitudes, which as a rule accumulates on the initiative and dedication of each individual.

In order to form the set of competences, it is necessary that the individual has the time available to dedicate himself to this objective, the will to dedicate himself, but especially, that he has the freedom to dedicate himself.

The freedom in question is not restricted to the freedom to come and go, but its main scope is the freedom of choice, of how to enjoy your vital time, whether to dedicate yourself to improving skills, whether for leisure, dedication to family, friends, work, and even rest or pure leisure.

## XI. DEVIATION OF CONSUMER PRODUCTIVE RESOURCES

What would be the diversion of the consumer's productive resources?

Paraphrasing Dr. Marcos Dessaune[31] , productive deviation occurs when the consumer, as a result of the supplier's unfair conduct, is forced to waste his productive resources, especially his vital or existential time, to solve problems in the consumption relationship, which the consumer did not create , and that would legally be the responsibility of the supplier. In this case there is a violation, a temporary limitation on the freedom of choice of what to do with vital time.

In this tuning fork Helen Neri[32] well explains that:

The time that must be supervised is linked to the person's personal time, which means, in their free time, that which could be devoted to any other activity, that is, it is time that will be spent according to the personal choice of each one. When someone has to spend their time with something that was not their choice, to solve a problem that was not generated by them, this is called unfair waste of time because of someone else's fault.

The author concludes by arguing that the result of unfair conduct by suppliers not only violates the principle of objective good faith, but there is a "...violation of the consumer's freedom, who could be using their free time to work, rest, enjoy your family. However, it directs you to solving problems at the supplier's negligence. The violation of freedom, in this context, generates moral damage”.

Corroborating the arguments presented, Cláudia Lima Marques and Laís Bergstein[33] maintain that:

By implementing time-consuming and inefficient systems, failing to invest adequately in the production chain, the supplier transfers to the consumer the burden resulting from its inertia, or, better said, the risks inherent to its own activity. And such reckless conduct can generate damage, including damage for lost time, also called “temporal damage”, which must be repaired.

## XII. REQUIREMENTS OR ASSUMPTIONS NECESSARY FOR THE APPLICATION OF THE THEORY

Although there are scholars and judges who admit the existence and applicability of the consumer's productive diversion theory, it is necessary to define how to apply the aforementioned theory.

For this, the creator of the theory lists some requirements or assumptions necessary for the duty to repair based on the theory of consumer productive deviation to remain configured, highlighting which would be mandatory requirements, and which would be optional.

### 12.1. Mandatory Requirements

12.1.1. Potential or effectively harmful consumption problem to the consumer[34] : This requirement is mandatory because without a consumption problem, there is no need to talk about a duty to repair, so that the starting point for the application of the consumer's productive deviation will be from the appearance of a defect or defect in the consumption relationship, from which would arise the duty to solve the problem, or repair the damage. On this treadmill the author clarifies that:

The consumer's productive deviation originates when the supplier creates a potential or actually harmful consumption problem and does not solve it spontaneously, quickly and effectively, leaving the operational and material time cost of doing so to the consumer.

12.1.2. The supplier's abusive practice of avoiding responsibility for the consumption problem: This requirement consists of the supplier's conduct in creating artifices and justifications, avoiding solving the potential or actually harmful consumption problem.

12.1.3. The harmful fact or event of the consumer's productive diversion[35] : Characterized by the effective waste of the consumer's vital time, both by the "... expenditure of the consumer's vital time, by the postponement or suppression of their planned or desired existential activities, by the deviation of their competences from these activities and, often , by the assumption of duties and costs of the supplier..."

12.1.4. The causal relationship between the supplier's abusive practice and the resulting harmful event : In short, it is the causal link between the supplier's conduct and the damage borne by the consumer.

12.1.5. The off-balance sheet damage of an existential nature suffered by the consumer[36] : this is " represented by the definitive loss of a portion of the consumer's total lifetime, by the harmful alteration of their daily life or their life project and by the installation in their life of a period of existential inactivity... ". It is observed that this necessary assumption is directly linked to the violation or temporary limitation of the consumer's freedom to decide the best way to apply his vital time, forcing him to waste his time in order to solve the consumption problem.

### 12.2. Optional Requirements

12.2.1. The emerging damage and/or loss of profit suffered by the consumer : This causes, in addition to the off-balance sheet damage of an existential nature, an effective property damage, which must be repaired.

12.2.2. Collective damage : Which according to Dr. Marcos[37] is "represented by the unlawful damage to the homogeneous individual right of a determined or determinable collective of consumers, linked by a common fact that causes them harm".

## XIII. LEGAL PRECEDENTS

here are currently thousands of judicial precedents, whether State Courts or Federal Courts, at the most diverse levels of the judiciary, including the Superior Court of Justice – STJ, recognizing and applying the theory of consumer productive deviation.

Within the scope of the Court of Justice of the State of Rondônia, we highlight 3 precedents, of which two are from the 2nd Civil Chamber, and one from the Appeal Panel, namely:

SUMMARY Civil appeal. Telephony. Failure to provide the service. Improper billing. Unlawful act. Services not contracted. Productive diversion. Moral damage. Sustained. Indemnity. Value. Fixation criteria. Minority. Evidenced that there was an undue collection of amounts above that contracted by the consumer, requiring several electronic contacts with the telephone and, even so, the charges did not cease, the failure to provide the service is characterized and compensation for the pain and suffering arising therefrom is characterized . The arbitration of indemnity arising from moral damages must be done on a case-by-case basis, with common sense, moderation and reasonableness, paying attention to proportionality in relation to the degree of fault, extent and repercussion of the damages, economic capacity,

individual characteristics and the concept of the parties.[38]

And still:

SUMMARY Civil appeal. Adhesive feature. Defective product. Moral damage. Material damage. Sucumbency fees. The shutdown of the plaintiff's television for more than thirty days, due to the defect whose solution to the problem directly with the company did not appear to be effective, goes beyond the mere displeasure and causes moral damage subject to indemnification, especially because the judicial route was necessary for the search for your right. The arbitration of indemnity arising from moral damages must be done on a case-by-case basis, with common sense, moderation and reasonableness, paying attention to proportionality in relation to the degree of fault, extent and repercussion of the damages, economic capacity, individual characteristics and the concept of the parties.[39]

The latter, pursuant to the rapporteur's vote:

In this case, the so-called productive diversion thesis is involved, which is defended by Marcos Dessaune, who, in an article on 3/26/2014, on the CONJUR website, established that:

Productive diversion is characterized when the consumer, faced with a situation of poor service, needs to waste his time and divert his skills — from a necessary or preferred activity — to try to solve a problem created by the supplier, at a cost of unwanted opportunity, of an irretrievable nature.

This is exactly the case in the case.

It should be noted that the appellant's negligence in resolving the case made the use of the acquired television unfeasible, which undeniably violates the morality of the appellant, who, as a consumer, did not have his rights respected nor his claims considered, leaving him private unfairly from the use of the good acquired by him.

Unnamed Resource. Right of regret. Delay in returning values. Non-compliance with the sole paragraph of art. 49 of the CDC. Waste of useful time. Productive consumer diversion. Moral damage. Configured. Indemnity amount. Proportionality and reasonableness. 1. Failure to immediately return amounts after exercising the right of repentance, pursuant to art. 49, sole paragraph of the CDC, in addition to wear and tear, it causes feelings of impotence and frustration in the consumer, which gives rise to the duty to indemnify. 2. Respecting the proportionality and reasonableness of the indemnity for the damage suffered by the consumer and the value not meaning any form of illicit enrichment, the amount fixed at the origin must be maintained. (NOMINATED CIVIL

APPEAL, Case No. 7005816-85.2019.822.0001, Court of Justice of the State of Rondônia, Appeal Panel - Porto Velho, Rapporteur of the Judgment: Judge José Augusto Alves Martins, Judgment date: 09/18/2020)

Second lectures brilliantly the Judge of Law José Augusto Alves Martins[40] :

The defendant's conduct is reprehensible, allowing the consumer to suffer when trying in vain to solve his problem. The Superior Court of Justice (STJ) has even adopted the Consumer Productive Deviation Theory, which has been adopted by other courts. I share an interesting explanatory judgment on the topic:

SUMMARY – APPEAL APPEAL – COMPENSATION FOR PAINAL DAMAGE – CONSUMER PRODUCTIVE DEVIATION – MORAL DAMAGE IN RE IPSA – REASONABLE AND PROPORTIONAL FIXED QUANTUM. Application of the thesis of "productive consumer deviation", according to which the conviction must consider the deviation of the individual's competences when attempting to solve a problem caused by the service provider, with repeated frustrations, due to its inefficiency and negligence. Moral damage in re ipsa. Reasonable and proportional fixed amount. Feature known and not provided. (TJ-MS - APL: 08039525620158120021 MS 0803952-56.2015.8.12.0021, Rapporteur: Judge Wilson Bertelli, Judgment Date: 12/07/2016, 2nd Civil Chamber, Publication Date: 12/08/2016)

I understand that the case in question occurred exactly what the defenders of this new theory say, so, then, the indemnity for moral damages should be applied in the modality in re ipsa .

In the STJ, the first precedent applying the theory was the REsp 1,737,412 - SE of the report of Minister Nancy Andrichi[41] .

SPECIAL RESOURCE. CONSUMER. TIME OF ATTENDANCE IN PRESENT AT BANKING AGENCIES. DUTY OF QUALITY, SAFETY, DURABILITY AND PERFORMANCE. ART. 4th, II, D, OF THE CDC. SOCIAL FUNCTION OF PRODUCTIVE ACTIVITY. MAXIMUM USE OF PRODUCTIVE RESOURCES. CONSUMER PRODUCTIVE DEVIATION THEORY. COLLECTIVE PAINAL DAMAGE. UNFAIR AND INTOLERABLE OFFENSE. ESSENTIAL VALUES OF THE SOCIETY. FUNCTIONS. PUNITIVE, REPRESSIVE AND REDISTRIBUTIVE. 1. This is a consumer collective, whereby the appellant requested that the appeal be sentenced to comply with the rules of face-to-face service at its bank branches related to the maximum waiting time in lines, the provision of toilets and the provision of seats



to people with mobility difficulties, in addition to compensation for collective pain and suffering caused by non-compliance with said obligations. 2. Special appeal filed on: 03/23/2016; concluded with the office on: 04/11/2017; judgment: CPC/73. 3. The appeal purpose is to determine whether non-compliance with municipal and federal rules that establish parameters for the adequate provision of face-to-face service at bank branches is capable of causing moral damages of a collective nature. 4. Collective moral damage is an autonomous kind of damage that is related to the psycho-physical integrity of the community, a strictly trans-individual asset and, therefore, does not identify with those traditional attributes of the human person (pain, suffering or psychic shock) , supported by individual moral damages. 5. Collective pain and suffering is not to be confused with the sum of natural off-balance-sheet injuries, therefore it is not subject to the principle of full reparation (art. 944, caput, of CC/02), fulfilling, moreover, specific functions. 6. In collective moral damage, the punitive function - exemplary sanctioning of the offender - is, allied to the preventive character - of inhibition of the repetition of the illegal practice - and the principle of prohibition of the agent's illicit enrichment, so that the eventual patrimonial gain obtained with the practice of the irregular act is reverted in favor of society. 7. The duty of quality, safety, durability and performance that is assigned to suppliers of products and services by art. 4, II, d, of the CDC, has an implicit collective content, a social function, related to the optimization and maximum use of productive resources available in society, including time. 8. The voluntary disregard of legal guarantees, with the clear intention of optimizing profit at the expense of the quality of the service, reveals an offense to the duties attached to the principle of objective good faith and constitutes an unfair and intolerable injury to the social function of the productive activity and to protection of the consumer's working time. 9. In the concrete case, the defendant financial institution chose not to adapt its service to the quality standards provided for in municipal and federal law, imposing on society the waste of useful time and causing an unfair and intolerable violation of the social interest of maximum use of productive resources , which is enough for the configuration of collective moral damage. 10. Special feature provided.

Recent judgments are applying the theory of consumer productive diversion, and its necessary assumptions, in non-consumerist legal relations, as is the case of TRF 1, applying the theory in favor of a beneficiary of sick pay, due to the delay in granting the social security benefit , and the need for the latter to return to the branch due to a registration error, equating the beneficiary's low

sufficiency with the consumer's low sufficiency, otherwise let's see:

SUMMARY CIVIL APPEAL. INSS. DELAY IN THE CONCESSION OF SOCIAL SECURITY BENEFIT. SICKNESS ALLOWANCE. ADMINISTRATIVE MISTAKE. UNJUSTIFIED REGISTRATION ERROR. RETURN OF THE AUTHOR TO THE AGENCY. PRODUCTIVE DEVIATION THEORY. MORAL DAMAGES. OCCURRENCE. SENTENCE REFORMED. I. Civil liability of the Public Administration is provided for in art. 37, § 6 of the Federal Constitution, being objective in nature due to the adoption of the theory of administrative risk. Combining the constitutional precept with arts. 186, 187 and 927 of the Civil Code, it is understood that for the configuration of civil liability of the public entity and its consequent duty to indemnify, proof of the practice of administrative act by a state agent, damage and causal link between them, is waived the proof of intent or guilt. Precedents. II. As a rule, this E. Court has not recognized the right to compensation for moral damages due to the simple delay in granting social security benefits. Precedents. III. However, in the case of the case file, the plaintiff's administrative request for the granting of sick pay, although granted, was not processed for an administrative mistake, in an unjustified manner, and she had to refer again to the defendant's agency, in which the error was found. and the application is processed again, with the benefit application date later than the one on which it was actually performed. IV. Need for an official letter to be forwarded by the Federal Public Defender's Office so that there could be clarification to the plaintiff of the start date of her benefit, in which the INSS admitted the mistake, which was recognized only in the judicial sphere. V. The Consumer Productive Deviation Theory can also be applied in view of the time devoted to applying for and obtaining social security benefits. SAW. Compensation for pain and suffering fixed at R\$ 10,000.00 (ten thousand reais). Precedents. VII. The plaintiff's appeal, partially upheld (item VI). [42]

In a most recent decision, on the occasion of the judgment of the Interlocutory Appeal in Appeal Review no. 1380-97.2018.5.17.141, the TST applied the theory of productive deviation in the employment relationship. In his vote, the judge clarified that:

In view of the similarities between consumption and labor relations, in particular the low-sufficiency characteristic of the consumer and the worker, I understand that the aforementioned theory is fully applicable in this Specialized Company, imposing on the employer to fail to comply with the legal duty incumbent upon him, taking the worker to the weariness of filing a lawsuit to obtain the good of life (undoubtedly by the way,

since the discharge of the CTPS is the employer's duty) to the payment of compensation for moral damages. Thus, the defendant's conviction for moral damages is irreparable. Once the suffering caused by the defendant's abusive attitude when evading basic worker rights is evident, the right to compensation remains undeniable, especially considering that social responsibility places the economy at the service of people's well-being.[43]

#### XIV. CONCLUSION

After going through a historical-normative sequence, we realized that in the beginnings of humanity's existence, there was no trade relationship, since production was geared towards subsistence, and with the passage of time, subsistence production was no longer sufficient for the satisfaction of basic needs.

With man starting to live in society, the first commercial relationships emerged, focused on the direct exchange of surplus products, which in short, gave rise to what is currently known as a consumer relationship.

We realized that with the emergence of consumer relationships, problems arising from these relationships also arose.

We also realized that the State, in taking over the exercise of jurisdiction, assumed the power to resolve the conflicts that were presented to them.

Among the guarantees offered by the State are the right to action, and the provision of free legal assistance, both in the technical-professional aspect, having specific bodies for the exercise of this right, as in the issue of exemption from the payment of procedural expenses, and even even from the loss of suit.

The concern of the Original Constituent, as well as the legislators with the defense of the interests of consumers, was demonstrated in the context of the Federal Constitution of 1988, as well as in the Consumer Protection Code, with the express recognition of the consumer's vulnerability in the consumer relationship, and the disparity of weapons between suppliers and consumers.

We observe that time has a social value of such relevance that it has become a legal asset protected by constitutional and infra-constitutional norms.

We present consumer resources, namely, vulnerable natural resources; abstract cognitive resource; vulnerable vital resources; limited productive resources; scarce material resources; and conditioned volitional resource, highlighting the limited productive resources, clarifying that these are "...your time and your skills (set of

knowledge or knowledge, skills or know-how and attitudes or know-how) necessary for the performance of any activity... ”.

We conceptualize the diversion of the consumer's productive resources, explaining that it occurs when the consumer, due to problems in the consumption relationship that did not cause it, wastes his vital time and skills to solve consumption problems, which are the responsibility of the suppliers.

The requirements or assumptions necessary for the application of the consumer's productive deviation theory were presented, as well as legal precedents recognizing the theory and applying it.

It is noteworthy that, although the theory has emerged with scope to protect the rights and interests of the consumer, several courts are recognizing and applying the theory in non-consumerist legal relations, as in the precedents presented in the TRF1, which applied the theory to condemn the Union to pay moral damages to the beneficiary of sick pay, who had to file more than once with the INSS agency due to a registration error.

In this tuning fork, we present a very recent precedent of the TST, which, on the occasion of the judgment of the Interlocutory Appeal in a Review Appeal, recognized and applied, by analogy, the theory of the diversion of productive resources, " in view of the similarities existing between the relations of consumption and of work, in particular the low-sufficiency characteristic of the consumer and the worker... ”, even though the legal relationship between the parties is not one of consumption, but one of work and employment.

With the observations, it is clear that the consumer's vital time is a protected, scarce, finite, non-accumulative and irrecoverable legal asset, and the damage to this asset, verified the presence of the requirements or assumptions necessary for the application of the theory, assume that the off-balance sheet damage of an existential nature will be considered, that is, the resulting damage is in re ipsa, and must be indemnified, and not treated as a mere unpleasantness, or mere mishaps or misfortunes of everyday life.

#### REFERENCES

- ABREU, Paula Santos de. Consumer protection under the treaties of the European Union, NAFTA and Mercosur. *LEGAL JOURNAL OF THE PRESIDENCY*, v. 7, p. 1-20, 2005.
- ALMEIDA, Diogo Assumpção Rezende de. General theory of the process. Getúlio Vargas Foundation - FGV Direito Rio, 2015.
- UN GENERAL ASSEMBLY (GA). Resolution 39/248. AG Index: A/RES/39/248, April 16, 1985. (Establishing General Guidelines for Consumer Protection (UN, AG. 1985))

- BARROSO, Carlos Eduardo Ferraz de Mattos, General Theory of Process and Knowledge Process. 13th ed. São Paulo: Saraiva, 2012.
- BULOS, Wadi Lammêgo. Federal Constitution Annotated. 7th ed. Sao Paulo-SP. Saraiva, 2007.
- BRAZIL. [Constitution (1988)]. Constitution of the Federative Republic of Brazil, 1988. Brasília, DF: Presidency of the Republic. Available at: [http://www.planalto.gov.br/ccivil\\_03/constituicao/constituicao.htm](http://www.planalto.gov.br/ccivil_03/constituicao/constituicao.htm). Accessed on: June 8 2021.
- BRAZIL. [DECREE-LAW No. 2,848, OF DECEMBER 7, 1940.]. Criminal Code. Brasília, DF: Presidency of the Republic. Available at: [http://www.planalto.gov.br/ccivil\\_03/decreto-lei/del2848.htm](http://www.planalto.gov.br/ccivil_03/decreto-lei/del2848.htm). Accessed on: June 22 2021.
- BRAZIL. [DECREE-LAW No. 5.452, OF MAY 1, 1943]. Consolidation of labor laws. Brasília, DF: Presidency of the Republic. Available at: [http://www.planalto.gov.br/ccivil\\_03/decreto-lei/del5452.htm](http://www.planalto.gov.br/ccivil_03/decreto-lei/del5452.htm). Accessed on: June 22 2021.
- BRAZIL. [DECREE No. 6,523, OF JULY 31, 2008.]. Consumer Service Law - SAC. Brasília, DF: Presidency of the Republic. Available at: [http://www.planalto.gov.br/ccivil\\_03/\\_ato2007-2010/2008/decreto/d6523.htm](http://www.planalto.gov.br/ccivil_03/_ato2007-2010/2008/decreto/d6523.htm). Accessed on: June 22 2021.
- CHAGAS, Hellen Neri das. The application of the consumer's productive deviation: possibility of compensation for moral damages due to the deprivation of liberty. 2019. Course Conclusion Paper (Law Degree) - Faculty of Legal and Social Sciences, University Center of Brasília, Brasília, 2019.
- DANTAS, Alexandre Fernandes. Access to Justice and free legal assistance in Brazil. In: Legal Scope, Rio Grande, XIV, n. 87, Apr 2011. Available at: [http://www.ambito-juridico.com.br/site/index.php?n\\_link=revista\\_artigos\\_leitura&artigo\\_id=9146](http://www.ambito-juridico.com.br/site/index.php?n_link=revista_artigos_leitura&artigo_id=9146).
- DINIZ, Eduardo Abílio Kerber. Civil Liability Draft/Eduardo Abílio Kerber Diniz. Ananindeua, PA: Itacaiúnas, 2021.
- Consumer Law: reflections on the impacts of the Covid-19 pandemic / Coordination: Alexandre David Malfatti, Paulo Henrique Ribeiro Garcia and Sérgio Seiji Shimura. São Paulo: Escola Paulista da Magistratura, 2020. V. 1. Several authors. Rizatto Nunes, p. 298.
- FILOMENO, José Geraldo Brito. Consumer rights / José Geraldo Brito Filomeno. – 15th ed. rev., current. and ref. – São Paulo: Atlas, 2018.
- GARCIA, Leonardo de Medeiros. Commented Consumer Protection Code: article by article I Leonardo de Medeiros Garcia - 13. ed. rev. wide and present- Salvador: JusPODIVM, 2016.
- PEREIRA, Caio Mário da Silva. Civil Liability / Caio Mário da Silva Pereira; Gustavo Tepedino. – 12. ed. rev., current. and wide – Rio de Janeiro: Forensics, 2018.
- PORTO, AA. Historicity of Commercial Law. Jusbrasil. 2014. <https://ademarcosporto.jusbrasil.com.br/artigos/152147339/historicidade-do-direito-comercial>. Accessed on June 06. 2021.
- MARQUES, CL. Insufficient consumer protection in the rules of Private International Law - The need for an Inter-American Convention (CIDIP) on the law applicable to some contracts and consumer relations. *International Derecho y de la Integración*, Santa Fe, v. 2, p. 139-184, 2003.
- MARQUES, CL; BERGSTEIN, LG. The valuation and protection of the consumer's time: the new position of the STJ on the responsibility of the trader for vices. *JOURNAL OF THE COURTS (SÃO PAULO. PRINTED)*, v. 997, p. 211-227, 2018.
- SILVA, Altino Conceição da. The constitutional protection of the consumer and its normative density *Conteúdo Jurídico*, Brasília-DF: 12 jun 2021. Available at: <https://conteudojuridico.com.br/consulta/Artigos/43677/a-protecao-constitucional-do-consumidor-e-its-normative-densification>. Accessed on: Jun 12, 2021.
- SOUSA, Rainer Gonçalves. "History of Commerce"; Brazil School. Available at: <https://brasilescola.uol.com.br/historia/historia-do-comercio.htm>. Accessed on June 4, 2021.
- TURTLE, Flávio. Civil liability manual: single volume / Flávio Tartuce. – Rio de Janeiro: Forensics; São Paulo: METHOD, 2018.
- TARTUCE, Flávio Consumer Law Manual: material and procedural law, single volume / Flávio Tartuce, Daniel Amorim Assumpção Neves. – 10. ed. – Rio de Janeiro: Forensics; Method, 2021
- TEPEDINO, Gustavo Fundamentals of civil law: civil liability / Gustavo Tepedino, Aline de Miranda Valverde Terra, Gisela Sampaio da Cruz Guedes – 2nd ed. – Rio de Janeiro: Forensics, 2021. (Fundamentals of civil law; 4).
- SILVA, Ticiano Alves e. The benefit of free justice in the New Code of Civil Procedure. *Legal Magazine of the Judiciary Section of Pernambuco*, vol. 8, p. 299-320, 2015.
- VALANT, Jana. Consumer protection in the EU: Policy Overview. EPS | European Parliamentary Research Service. 2015.

- [1] Rosalina Alves Nantes - Doctoral student at the Postgraduate Program in Regional Development and Environment (PGDRA) at the Federal University of Rondônia. Master in Administration from the Federal University of Rondônia (2016/2018). Graduated in Law from the Federal University of Mato Grosso do Sul (2000). General Coordinator of the Legal Practice Nucleus of the Department of Legal Sciences at UNIR/PVH.
- [2] Thiago Marcos Sales Pereira – Graduated from the Law Course at the Federal University of Rondônia – UNIR.
- [3] Aldair Jône Almeida Soares – Undergraduate in Law at the Federal University of Rondônia – UNIR.
- [4] Delson Fernando Barcellos Xavier - Graduated in Legal and Social Sciences from the Federal University of Rio de Janeiro - UFRJ (1992), specialization in strategic policy (ADESG/UNIPEC) and Public Law (UNIR), Master in Constitutional Law from the University Federal of Minas Gerais - UFMG (2003) and Ph.D. in City Law from the State University of Rio de Janeiro - UERJ (2013)
- [5] MARTINS, 2000, p. 1, apud PORTO, 2014. Historicity of Commercial Law. Jusbrasil. 2014.
- [6] SOUSA, 2020. "History of Commerce".

- [7] PORTO, AA, 2014. *Historicity of Commercial Law. Jusbrasil*. 2014.
- [8] NUNES, 2020, p. 298. Consumer Rights: reflections on the impacts of the Covid-19 pandemic
- [9] FILOMENO, 2019, p. 82. Consumer Rights.
- [10] TARTUCE, 2021, p. 80. Consumer Law Manual: material and procedural law, single volume.
- [11] GARCIA, 2017, p. 44. Commented Consumer Protection Code: article by article.
- [12] ABREU, 2005, p. 3. Consumer protection under the treaties of the European Union, Nafta and Mercosur.
- [13] VALANT, 2015, p. 4. Consumer protection in the EU: Policy Overview.
- [14] MARQUES, 2003, p. 171. Insufficient consumer protection in the rules of Private International Law - The need for an Inter-American Convention (CIDIP) on the law applicable to some consumer contracts and relations.
- [15] MARQUES & BERGSTEIN, 2018, p. 2. The valuation and protection of the consumer's time: the new position of the STJ on the responsibility of the trader for vices.
- [16] PHILOMENO 2018, p. 58. Consumer Rights.
- [17] ALMEIDA, 2015, p. 48. General Theory of Process.
- [18] BULOS, 2007, p. 223. Federal Constitution Annotated.
- [19] SILVA, 2015, p. 3. The benefit of free justice in the New Code of Civil Procedure.
- [20] DANTAS, 2011. Access to Justice and free legal assistance in Brazil.
- [21] PEREIRA, 2018, P. 28. Civil Liability.
- [22] TEPEDINO, 2020, p.35. Fundamentals of civil law: civil liability.
- [23] AZEVEDO, Álvaro Villaça apud TARTUCE, 2018, p. 46. Civil liability manual: single volume.
- [24] DINIZ, 2021, p. 39. Civil Liability Draft.
- [25] Latin expression that literally means "the state in which things were before the war". In the legal context, it means the state of affairs before the conflict, dispute or litigation.
- [26] DINIZ, 2021.
- [27] TEPEDINO, 2021, p. 149. Fundamentals of civil law: civil liability.
- [28] DINIZ, 2021, p. 54. Civil Liability Draft.
- [29] Brazil, 2002. LAW No. 10,406 OF JANUARY 10, 2002.
- [30] DESSUNE. 2017, p. 84. Deep theory of consumer productive diversion: the loss of wasted time and altered life.
- [31] DESSAUNE, 2017.
- [32] CHAGAS, 2019, p. 48. The application of the consumer's productive diversion: possibility of compensation for moral damages due to deprivation of liberty.
- [33] MARQUES & BERGSTEIN, 2018, p. 3. The valuation and protection of the consumer's time: the new position of the STJ on the responsibility of the trader for vices.
- [34] DESSAUNE, 2017, p. 246.
- [35] DESSAUNE, 2017, p. 250.
- [36] DESSAUNE, 2017, p. 250
- [37] DESSAUNE, 2017, p. 251.
- [38] TJRO. CIVIL APPEAL, Process No. 7001036-50.2020.822.0007, Court of Justice of the State of Rondônia, 2nd Civil Chamber, Rapporteur of the Judgment: Judge Marcos Alaor Diniz Grangeia, Judgment date: 12/14/2020.
- [39] CIVIL APPEAL, TJRO. CIVIL APPEAL, Process No. 7006353-63.2019.822.0007, Court of Justice of the State of Rondônia, 2nd Civil Chamber, Rapporteur of the Judgment: Judge Marcos Alaor Diniz Grangeia, Judgment date: 12/15/2020
- [40] INNOMINED CIVIL APPEAL, Proceeding No. 7005816-85.2019.822.0001, Court of Justice of the State of Rondônia, Appeal Panel - Porto Velho, Rapporteur of the Judgment: Judge José Augusto Alves Martins, Judgment date: 09/18/ 2020.
- [41] STJ - REsp: 1737412 SE 2017/0067071-8, Rapporteur: Minister NANCY ANDRIGHI, Judgment Date: 02/05/2019, T3 - THIRD PANEL, Publication Date: DJe 02/08/2019.
- [42] TRF1 - RO - CIVIL APPEAL N. 0013408-15.2013.4.01.3500/RO, Rapporteur: Federal Judge JIRAIR ARAM MEGUERIAN, Date of Judgment: 06.08.2018 6th Panel, Date of publication: 14/10/2018.
- [43] TST - Interlocutory Appeal in the Review Appeal - AIRR - 1380-97.2018.5.17.0141, Rapporteur Minister Kátia Magalhães Arruda, Judgment date: 05/24/2021.