

## The Nonexistent Consumer Arbitration in the Dominican Republic.

Legal mandates that exist only in the text.

Consumer Rights have been recognized by the Dominican Constitution as a fundamental right owed to every person in our country. In order to protect this right, the State has granted an administrative function of monitoring the market and the activities of suppliers, trying to avoid, with its intervention, the proliferation of abusive commercial practices for consumers of these goods or services. As part of this power, the administrative jurisdiction specialized in Consumer matters was created, in the hands of the National Institute for Consumer and User Protection [Instituto Nacional de Protección al Consumidor y Usuario] (Pro-Consumidor), which has a Consumer Arbitration system, as it is called, as an alternative mechanism for dispute resolution, which represents an option other than judicial means for the parties, and even different from Arbitration or other conventional alternative mechanisms.

It is important to highlight, that the American Convention on Human Rights - of which the Dominican Republic is a party - seeks to materialize the ideal of a free human being, free from fear and misery, which is only achievable if each State creates the conditions that allow people to effectively enjoy their economic, social and cultural rights, as well as their civil and political rights.

To that aim, article 53 of the Dominican Constitution of 2010 provides that “every person has the right to have quality goods and services; and to objective, truthful and timely information about the content and characteristics of the products and services that they use or consume, under the provisions and regulations established by law. “People who are injured or harmed by poor quality goods or services have the right to be compensated in accordance with the law.”

As Rodríguez highlights (Namphi, Constitutional Protection of Consumers and Users [Protección Constitucional del Consumidor y del Usuario], Ed. Corripio, S.A.S., 2018, page 30), two dimensions emerge from this article: “a) on the one hand, the right of every person to have access to quality goods and services and to protect their interests and, b) on the other hand, the duty of the State to protect it by ensuring that people who are injured or harmed by poor quality goods or services are compensated in accordance with the law.”



It should be noted that, in accordance with article 74.4 of the Dominican Constitution, the rights and guarantees it grants to consumers and users, as well as the application of laws created for protectionist purposes, must always be applied directly, without burdensome bureaucracies. This article has opened interpretation gaps among doctrinaires in the sense that the State must seek, without many rules, the protection of consumer rights when their impact has been proven, and at the same time, promote open dialogue between the parties involved in a conflict, in order to resolve them more quickly.

Based on this interpretation, many believe that it is immaterial that Law No. 358-05 does not expressly mention the power of Pro-Consumidor to apply sanctions to those who violate said regulations and therefore violate the constitutional right of the consumer and user, but it should be enough that it is a right of a constitutional nature so that all means for its protection are in effect. This is due to the fact that Law no. 358-05 only expressly mentions the sanctioning power of Pro-Consumidor in relation to infractions against health, not indicating those infractions not related to health, such as abuses in adhesion contracts, claims for contractual breaches, violation of the right to information, unjustified modification of offers, among others, for which, in our opinion, it offers the alternative of consumer arbitration.

It could be said that the legislator intended to leave the sanctioning power solely and exclusively with respect to illegal activities with imminent consequences such as those infractions committed against health. So much so that Law No. 166-12, which creates the Dominican System for Quality (SIDOCAL; today called INDOCAL) and Law no. 17-19 on the eradication of illicit trade, through which the power of Pro Consumidor is extended, or rather strengthened, to inspect and monitor the market in relation to the quality of goods and services, food safety and security, compliance with standards and technical regulations regarding the safety of facilities, systems and processes and any other that could be established by regulation.

Certainly the role of Pro-Consumidor does not stop at the aforementioned activities, but its sanctioning power is limited. Therefore, in its function for dispute resolution, a true system is necessary in which Pro-Consumidor can direct, protect and promote the resolution of disputes between suppliers and consumers that arise from violations that do not involve health risks, without the need to have the power to sanction.

Although, we must recognize that, in its quest for the recognition of said power, a proposal to modify the Law is currently being discussed in the Senate, whereby this faculties would be extended, granting the power to the Executive Directorate of Pro-Consumidor to impose sanctions on any infraction committed against the Law, without the intervention of the courts as currently provided.

However, we understand that these efforts should be refocused on executing what is already established in the Law, because even with the possibility to access the mechanism known as Consumer Arbitration, this mechanism has not yet been implemented, depriving consumers, and also suppliers, of access to a more expeditious and effective system, and raising the question of whether it turns out to be optimal and necessary for this specialized subject.

This would be an extrajudicial system for resolving conflicts between consumers and users of goods and services and their suppliers, arising from a consumer relationship, without special formalities and with a binding and enforceable nature for both parties. Unlike the conventionally known arbitration, it would be a free system for the parties, who would have expert arbitrators in consumer matters; But the most relevant thing is that, with regard to the principle of consent of the parties, unlike the arbitration agreement established in conventional commercial arbitration, in the consumer arbitration system, the will that must be expressed is that of the supplier, through the public offer that would be registered with Pro-Consumidor.

This public offer of submission would consist of the supplier's expression that the relationship that arises from the offer, sale or provision of a good or service will be adhered to the arbitration system and that any dispute or conflict arising by virtue of such relationship, would be submitted to Consumer Arbitration. In the same way that raffles, contests, and adhesion contracts are registered today in Pro-Consumidor, these offers, sales or provisions of goods and/or services would be registered. All this under the Regulation approved and promulgated 5 years ago through Resolution No. 11 of the Board of Directors of Pro-Consumidor, adopted on June 3, 2008.

In the meantime, the legal and jurisprudential discussions continue about the sanctioning power of Pro-Consumidor, since it is understood that neither Law no. 358-05 nor Law no. 107-13 recognize it as such. A more ideal scenario would be to implement this system provided by the law, where not only a non-binding conciliation document is drawn up between the parties, but also a fully binding and enforceable arbitration award can be issued; especially when it comes to disputes that, in principle, would be considered of a civil nature, but that, because they involve suppliers and consumers, usually under unequal conditions, are relationships governed by the specialized subject of consumer law. Another discussion for another article.



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\*This summary contains only general information on the topics covered, so this document does not constitute a legal opinion. Ulises Cabrera recommends seeking specific legal advice for each case.