

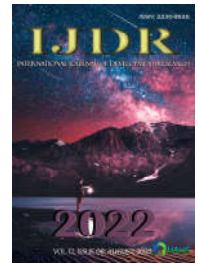


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## TOURIST TRAVEL, CANCELLATIONS, RIGHTS AND ALTERNATIVES IN THE CONTEXT OF THE PANDEMIC

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### ABSTRACT

This reflection is based on the important discussion that was undertaken regarding the necessary adjustments in view of the cancellation of trips that were scheduled at the beginning of the period of health crisis experienced worldwide since the end of 2019. Many discussions arose in view of the closing of borders, which made international travel impossible, as well as the interruption of travel within the country itself, given the worsening public health crisis, as a result of the COVID-19 pandemic. The central question of this study revolves around the solution presented to consumers who already had scheduled and paid trips, in order to guarantee access to amounts previously disbursed and paid to suppliers of products and services, in the face of the public health emergency. It is also important to highlight the impasse of safeguarding the balance and survival of companies in the tourism sector, an important segment for the generation of employment, income, provision of services and fundamental for the development of a country in the face of consumer rights, which had already airfare and accommodation reservations. Thus, the present study reveals the path taken in the face of the urgency of finding an alternative capable of guaranteeing respect for the rights of those involved, based on the analysis of the provisions of the legislation approved in this context of health crisis. With the research, it was concluded that the approved rules were intended to achieve a reasonable balance by preserving the interests of the two parties involved in this legal relationship: on the one hand, protecting the good financial health of companies in the tourism and accommodation sector and, on the other hand, to safeguard the rights of consumers who had already fully or partially paid in advance for their travel packages.

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## INTRODUCTION

A unique experience. This is how the global health crisis can be defined, which has impacted and still affects several areas of human life. Initiated in the city of Wuhan, China, at the end of 2019, the health emergency situation reached unimaginable proportions, affecting the entire world, generating fear, insecurity and spreading the terror of death everywhere. One could never imagine this typical war environment, given the destructive force of the virus, capable of quickly reaching a large proportion, leading to a desolate and worrying scenario. Since the advancement of science with the discovery of vaccines, one could not imagine experiencing such a scenario. A disease that was advancing rapidly, with great lethal power, totally unknown to scientists and for which there was an urgent need for an immunizing agent that could present a level of effectiveness capable of containing the scenario of destruction caused by the new coronavirus. The scientists stopped all their other activities to research the new immunizer.

Reports revealed that numerous scholars in the medical field dedicated themselves full-time throughout the period of worsening of the pandemic with the sole objective of making the long-awaited vaccine available to the population. The entire world has been hit by the terror and destruction caused by the pandemic. Important help came from the wide dissemination of the measures adopted by the first countries affected by the infection, with the aim of preventing the spread of contagion. The way forward would be to adopt what worked in the countries initially affected by the disease and discard the wrong practices, which did not bring benefits. In this sense, it was widely reported that the possibility of reducing contamination became more effective with the use of protective equipment and physical distance, in order to avoid the grouping of people and, thus, to stop the wave of contamination. While scientists from all over the world were dedicated to research for the approval of an immunizing agent capable of controlling this situation that was showing itself to be totally out of control, the pandemic did not stop and, for a long time, it was possible to see the contamination in an upward curve, increasing the collective despair. As the pandemic persisted, stringent

measures had to be taken in an attempt to save lives. In this perspective, several countries have adopted the closure of ports and airports, with the purpose of minimizing the movement of people and, thus, being able to control the spread of the virus. Among these measures, the need to reduce contact between people, as a way to stop contamination, led to the adoption of strict distancing measures: educational activities carried out remotely, interruption in the continuity of economic activities considered non-essential, option for home office, among many others. In Brazil, the adoption of these measures caused serious financial difficulties for people who work in the sector of supplying products and providing services, and many others who fall into this category. At this point, tourism activities were directly affected, since trips had to be interrupted, given the worsening risk of contamination. The interruption of trips for leisure, work or for other purposes, generated, at the same time, great financial losses for those who work in the tourism sector and, also, problems for consumers, who experienced numerous difficulties related to the protection of their rights in the face of the need to reschedule or even the cancellation of already scheduled trips, rescheduling of already paid accommodations, among other inconveniences. Whether due to the fact that some countries have closed their borders, making it impossible to carry out international trips that were already scheduled, or due to the abandonment of proceeding with previously planned trips, due to the fear of contamination during the trips and at the destination, all this generated a crisis in the sector that provides these services.

How would it be possible to adjust the conflicting interests: how to cancel the trip without losing the amounts that had already been paid to the suppliers of products and services? And, on the other hand, in the event of total cancellation of reservations already made with the reimbursement of the amount paid, how could the sector providing these services survive during the pandemic, guaranteeing the maintenance of the jobs of its employees? Undoubtedly, any wrong step can be very disastrous for the survival of companies linked to the tourist activity. To avoid the ruin of the tourism sector, it was urgent to find an alternative capable of meeting both sides of this equation: respecting consumer rights, but without causing irreparable damage to the development of economic activities in the tourism sector. The edition of Provisional Measure No. 948 in April 2020 and its subsequent conversion into Law 14,046 of August 24, 2020 had the clear purpose of ensuring the survival of companies in this sector of the economy during the pandemic period. The present study intends to analyze this scenario and a brief comment on the aforementioned normative diplomas to better understand the path chosen to, simultaneously, prevail the respect for consumer rights and the preservation of the life of companies in the tourism sector, an extremely relevant activity for the economy and development.

## METHODS AND MATERIALS

The methodological support used for the present study was exploratory/descriptive, supported by bibliographic and documentary research. For the bibliographic research, the analysis of legal work related to consumer law was adopted. In order to carry out the documentary research, normative instruments were used, edited with the specific purpose of regulating consumer relations in the tourism sector, disciplining the rights and duties of the consumer and supplier of products and services, which had already been contracted by consumers and which would be carried out during the period when the health crisis was declared. Therefore, the analysis was based on the study of Provisional Measure n° 948, published in April 2020 with the objective of disciplining the cancellation of services, reservations and events in the Tourism and Culture sector, later converted into Law 14.046 of August 24, 2020, 2020, which will also be analyzed. The approval of the aforementioned normative diplomas had the clear purpose of balancing the rights and duties of the parties involved in these legal consumer relations, disciplining the postponement and/or cancellation of services, reservations and events in the areas of tourism and culture, which could not be maintained in the way they were initially contracted.

## RESULT AND DISCUSSION

Since the beginning of 2020, a challenging scenario has been set in Brazil: the coronavirus pandemic, profoundly changing people's lives. As already argued, the pandemic began at the end of 2019 in China and spread to other countries, causing a series of unimaginable losses. With human life threatened, given the increasing number of contaminations, it was necessary to know how to dribble this unknown enemy. One of the alternatives adopted was social distancing, in an attempt to stop the spread of the disease. Although it was an essential measure to preserve life, social distancing generated numerous implications for economic activities in general and, in particular, for tourist activities. If before the pandemic it was absolutely normal for people to set up their finances with the aim of making one or more trips throughout the year, in a pandemic period it would not make sense to risk their own lives, maintaining a trip with the possibility of rapidly increasing the number of contamination by a new disease, the treatment of which was still unknown by medical professionals. This scenario proved to be disastrous for tourist activities. Undoubtedly, tourism has suffered a great impact with the measures that were announced during the period of the pandemic. Undoubtedly, tourism has suffered a great impact with the measures announced during the period of the pandemic. Both domestic and international tourism were affected, due to the policy of closing borders. This measure was adopted by many countries believing that by reducing the number of people circulating in their territory, the risk of contamination would reduce. In addition to this policy adopted by some countries in relation to foreign travelers, domestic tourism was also seriously affected, given the growing concern about the risk of contamination, causing numerous people to request the cancellation or rescheduling of already scheduled trips. An alternative to better address this problem came with Provisional Measure n° 948 edited by the Federal government in April 2020 to discipline the cancellation of services, reservations and events in the Tourism and Culture sector. The intention was to minimize the damage to the providers of these services, pending the end of the health crisis. Provisional Measure No. 948, edited by the Brazilian government, proved to be opportune to resolve the impasses arising from legal consumer relations. Its objective was to regulate the contractual relationships previously agreed between consumer and supplier of products and services that, given the severity revealed by the pandemic and due to the enormous risk of contamination, were no longer interested in maintaining trips as they had initially been contracted.

At that time, without a doubt, the publication of a regulatory rule for this situation represented a guarantee for companies in the tourism sector with regard to the non-cancellation of contracted service packages, ensuring the continuity of service provision at the most opportune moment; it also meant a nod to consumers, who could reschedule their trips to a more suitable time, without prejudice to the amounts already invested, in the face of the unknown enemy, still without an immunizing agent capable of guaranteeing people's safety. This situation, nowadays, with the advent of vaccines, is already under control, with people gradually resuming their travels according to their various interests. At that time, the provision contained in Provisional Measure n° 948 regarding the possibility of the consumer claiming the cancellation of services, reservations and events already contracted was that the provider of these services could not be required to reimburse the amounts initially spent at the time of contracting, giving the supplier the possibility of adopting one of the following hypotheses: a) ensuring the rescheduling of canceled services, reservations and events; b) guarantee the availability of credit for use or reduction in the acquisition of other services offered by the same supplier; c) present another possibility of agreement, to be formalized with the consumer. As provided for in the Brazilian legal system contained in article 62 of the Constitution, the Chief Executive has the right to issue provisional measures, with the force of law, in case of relevance and urgency, and must submit them immediately to the National Congress. It was in this sense that the urgency of a regulation for this situation gave rise to the edition of the

MP, which, in order to become law, should be submitted to the Legislative Power for appreciation. Thus, according to the Constitution, during its validity, Provisional Measure No. 948 was submitted to the National Congress for consideration, having been approved and converted into Law No. 14,046, of August 24, 2020.

As provided for in the legal norm, the alternative found was the search for consensus between consumer and supplier. It was established that the consumer would have the guarantee of subsequent use of this credit paid to the companies at the time of contracting the travel packages. Thus, at a later time, which is more opportune and secure, the consumer would have access to the amount he had paid in advance, a situation that can already be seen at the present time. In the event that an agreement is not reached between the parties, the normative provision is that the service provider should reimburse the amount received, monetarily updated, within a period of twelve months, counted from the end of the state of calamity. The conversion of the Provisional Measure (MP) into Law did not change the contours initially defined by the MP. But it is possible to perceive a fundamental change in the new law when it provides for the provision that the aforementioned reimbursement should only occur if it is impossible for the supplier to reschedule the service or make the credit available. It is easy to understand the justification for this legislative provision: not generating an even greater impact on the supplier of products and services, prioritizing the markdown of the service or the availability of credit for use by the consumer at a later time, to the detriment of reimbursement of the amount already received. This new rule caught the attention of jurists, who criticized it for understanding that there was a beneficial treatment of the supplier to the detriment of the consumer, generating an imbalance in the consumption relationship. In this sense, they point out that the rule violated the provision contained in article 6, I of the Consumer Protection Code (CDC), which establishes in the list of basic consumer rights "the protection of life, health and safety", since the maintaining travel during the course of the pandemic would put the life and health of the consumer at risk. In addition to violating the consumerist norm, they also claim that the legislator did not observe the express rule of the Brazilian legal system from which emanates that the risk for the exercise of economic activity must be borne by those who exercise it, in this case, the supplier of the products and services.

Looking at this regulation today, after more than two years of the pandemic, it cannot be denied that adopting measures to avoid the ruin of tourism companies was the right decision. It is undeniable that there was damage to the consumer, since countless people lost their jobs, compromising the source of income and, therefore, this amount that would be destined for a trip that was no longer in the traveler's plans would certainly be directed for these other demands. On the other hand, the survival of countless tourism-related companies and the maintenance of their employees' jobs depended on the maintenance of these contracts that had already been signed, in order to avoid an even greater impact on the income of companies and their employees, hence the need for a standardization capable of bringing the necessary balance that the situation demanded. As has been argued, it is important to emphasize once again that the tourism sector has done its best to find viable alternatives for the achievement of its business and that could align the strict rigor of health safety standards with the socioeconomic development for the sector. In order to guarantee this security-economic development binomial, the World Tourism Organization published, at the time, a document with fundamental recommendations for a safe and sustainable restart for the tourist trade, as we will see below.

**Safe and sustainable business and leisure tourism in the context of the pandemic:** The World Health Organization (WHO) said at the time that eradication of the novel coronavirus in less than two years was unlikely, while expectations around an effective vaccine capable of fighting SARS-CoV-2 were reduced on a universal/global scale before 2022. In view of these expectations, right at the beginning of the pandemic, it was urgent to think of an alternative that was capable of guaranteeing the protection of the rights of consumers of tourist

services without putting their health, physical or social integrity at risk, taking into account account of the worsening of the pandemic. To respond to this imperative challenge, at the time when the World Tourism Organization (WTO) published on May 28, 2020 a document entitled Global Guidelines to Restart Tourism with a set of guidelines capable of guiding the resumption of activities in the sector with the purpose of a restart: safe and sustainable. This work was carried out in consultation with the Global Tourism Crisis Committee. The ultimate goal implied: supporting governments, aligning the private sector in responding to the crisis, and restoring traveler confidence through security protocols. Following this line of reasoning, the WTO analyzed that the year 2020 was a catastrophic experience for the sector, due to the pandemic caused by COVID-19. In fact, according to the WTO document (2020), travel restrictions caused a 97% drop in the movement of international tourists in April, after a 55% retraction in March of the year under review. As a result, the loss for the sector was approximately 195 billion dollars (1.03 trillion reais) in national currency. With this, the effort of the WTO was evidenced, which, without delay, acted with global guidelines to direct the new practices, aiming to restore trust and promote a safe and sustainable resumption of tourism. The document under analysis proposed investing in values and virtues inherent to tourism, such as: solidarity, trust, resilience, sustainability, safety, responsibility, among others. With the perspective and the progressive resumption of work in tourist activities, today the influence of the media on the self-esteem of both workers in the area and people who have returned to travel is taken into account. In order to constantly reverse the feeling of insecurity in people's daily lives, campaigns have been very incisive and vehement in the idea of returning to normality without fear, but with full and unrestricted compliance with security protocols, with a view to not neglecting the imperative protection for life, health and safety provided for in the Consumer Protection Code in article 6, I, as mentioned above and, in the case in question, in the context of the impositions of the pandemic.

## FINAL CONSIDERATIONS

Although the end of the pandemic has not been decreed, as there are still serious risks for many individuals, however, the management and governance of tourism at this time of transition - not yet fully post-pandemic - are sensibly reinvented, because without such a posture can talk about safe tourism. To this end, management has made a very intense effort and has shown itself to be affectionate and guarantor of the rights of the parties involved, namely: the tourist and the tourist enterprise, as they cannot be treated separately, on the contrary, they are both sides of the same coin. Despite the strong criticism by the Brazilian consumerist doctrine in relation to the legislation approved with the aim of disciplining that moment of accentuated health crisis, in view of the understanding of a loss borne by the consumer, since it was not allowed to reimburse the amounts paid by a contract that could not be used immediately, it cannot be denied that the legislation was of singular importance to minimize the losses for service providers and tourist packages, avoiding an unprecedented loss in this sector, significantly reducing the number of companies that would be forced to close down their economic activity, imposing more unemployment on the population. By carefully observing the measures adopted, it is possible to recognize the importance of the approved legal norm, which despite not having been the object of celebration by many consumers and scholars of consumer law. Certainly, such procedure sought to preserve the balance of consumer relations, preserving the interests of the two parties involved in this legal relationship. Thus, in view of the two parts of the legal relationship of consumption, the legislation sought, at the same time, to guarantee that the consumer could enjoy the tourist package already contracted, when the sanitary conditions allowed it, and, from another angle, to enable the survival of countless companies linked to the hotel and tourism sector, during the pandemic period. Respecting all those who felt harmed and all those who see an unbearable loss for the consumer, it cannot be denied that this was the most sensible option, in the face of an unusual situation, which demanded and still requires, to a certain extent, compliance with social protection

measures. Finally, although the issue of the pandemic is not fully resolved, it is undeniable that since the beginning of the immunization process, the situation has changed, providing greater security to people with regard to carrying out professional and leisure trips.

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