THE APPLICATION OF THE MOST FAVORABLE LAW TO THE CONSUMER IN INTERNATIONAL CONSUMER CONTRACTS AND THE NEED TO GUARANTEE MEANS OF KNOWLEDGE OF FOREIGN LAW BY THE JUDGE

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ABSTRACT: This article seeks to address the new conflict rule set forth in the Mercosur Agreement on the Law Applicable to International Consumer Contracts and the available means of assessing the foreign law for Brazilian judges and their sufficiency. In the first part, the context that led to the signing of the agreement and its relevance for consumer protection in Mercosur will be firstly addressed, and secondly, the conflict rule established by the agreement and its ability to integrate the laws of Mercosur countries, as well as raise the level of protection for all consumers, will be addressed. In the second part, we will address, firstly, the norms of the Brazilian legal system regarding the proof of foreign law, and, secondly, the role of the institutes specialized in foreign law, for which we mention as an example the Swiss Institute of Comparative Law and the Max Planck Institute for International Private and Comparative Law. Finally, we conclude with the suggestion of creating a Latin American Institute of Comparative Law in order to guarantee the enforcement of the goals of the signed agreement.

KEY-WORDS: foreign law — consumer law — private international law

I. Introduction

A new agreement on the law applicable to international consumer contracts was signed in December 2017 by the Mercosur member countries. The treaty reflects the growing need for consumer protection at the transnational level, representing a step towards a future globalized justice. More than that, the agreement establishes a peculiar conflict rule in Private International Law: a favor conflict rule, which allows, on the one hand, the autonomy of the parties to choose the applicable law, but, on the other hand, limits this autonomy to the choice of a more favorable law to the consumer than the law of his or her country of domicile.

The interesting and complex rule of connection is already consolidated in international and European norms, which demonstrates an important step towards a minimum international standard of consumer protection. However, the agreement requires from the judge in charge of deciding on the international consumer dispute a real exercise of legal comparison, for which he must seek knowledge of the foreign law.

Given the above context, this article raises the question about the means of assessment of foreign law available to Brazilian judges and their sufficiency. In the first part, we will firstly address the context which led to the signing of the Agreement and its relevance for the protection

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of consumers in Mercosur (and in Latin America) and, secondly, the conflict rule established by the agreement and its ability to integrate the Mercosur countries' legal orders, as well as to raise the level of protection for all consumers. In the second part, we will firstly address the rules of the Brazilian legal system regarding the proof of foreign law, and secondly, we will address the role of comparative law institutes in Germany and Switzerland as a support for judges in cases where foreign law must be applied, notably the Max Planck Institute for Private International and Comparative Law and the Swiss Institute for Comparative Law. We conclude by suggesting the creation of a Latin American Institute of Comparative Law.

II. The Mercosur Agreement on the Law Applicable to International Consumer Contracts

A. The importance of ensuring international protection for consumers.

According to Bauman (2008, p. 71-73), we live in a consumer society, where not only consumption is an act of citizenship, but where people have also become products to be consumed. Consumer protection, therefore, proves to be paramount from the moment consumption becomes the driving act of economies. In addition, the dimension of the power of markets in contemporary society should be considered. The process which began with the Fordist mass production and culminated in algorithm-based technological advances allowed markets to globalize and, therefore, to accumulate resources and capital comparable to those of entire nations.

Regarding this matter, Brazil presents an exemplary legislation which recognizes the vulnerability of consumers and, thus, promotes the protection of these individuals who inevitably engage in asymmetric relationships. However, the nature of contemporary economic relations and the modern technological advances show us that within-borders-only consumer law may become ineffective. The digital marketplace increasingly overshadows its physical version and, consequently, consumer relations between parties in different countries become more common. The Internet forms a large (almost) borderless global marketplace. Moreover, modern means of transportation enable mass tourism, which brings consumers and suppliers from different territories into contact, thus raising issues concerning access to justice, conflict of laws, conflict of jurisdictions, among others.[1]

In these types of transactions, the already asymmetric consumer relations combine with the complexities of international and distance relations. Access to justice is, for instance, hindered, as consumption generally involves small claims, concerning sporadic contracts, which discourages consumers from initiating an often-costly cross-border litigation (MARQUES, 2019b, p. 425). And, in the case of tourists, they do not stay in thecountry long enough to file and follow up a lawsuit (MARQUES; SQUEFF, 2019, p. 115). Further, in international B2C (*business-to-consumer*) contracts, the informational vulnerabilityof the consumer is exacerbated due to the use of foreign language[2]. Indeed, often in these types of contracts there is, on one side, a consumer residing in country X and, on the other, a supplier in country Y.

In view of this scenario, international organizations have made efforts in order to

[1] Despite the undisputed recognition of the "global vocation" of consumer law, measures along these lines have remained in the realm of *soft law*, as exemplified by the 2015 UN Guidelines on Consumer Protection: 5). "*The only global consensus on consumer protection is a non-binding one: the UN Guidelines on Consumer Protection."* (MARQUES, 2019a, p. 57-60).

[2] In comparison with common consumer transactions in which the informational imbalance already exists due to the technical, legal and linguistic vulnerability of the consumer, who is expected to be informed by means of incomprehensible contracts. On the complexity of legal language for nonprofessionals, see CORNU, 2005.

internationalize consumer protection in the global market. Within the scope of this article, we will specifically address the initiatives within Mercosur.

The Treaty of Asunción, signed in 1991 by Brazil, Argentina, Paraguay, and Uruguay[3], created the Common Market of the South (MERCOSUR) and established "thecommitment of the Member-States to harmonize their legislation, in the pertinent areas, so as to achieve the strengthening of the integration process" (MERCOSUR, 1991), as well as their purpose to "modernize their economies in order to expand the supply and quality of goods and services, so as to improve the living conditions of their inhabitants" (MERCOSUR, 1991).

Since its creation, therefore, MERCOSUR's goal has been to harmonize thequality level of the supply of goods and services with the purpose of improving the living conditions of its inhabitants - consumers. Thus, one can observe the bloc's efforts to achieve these objectives since its inception, with, for example, the 1996 Common Protocol on Consumer Protection, which established basic parameters of rights and protection to serve as a guide for the legal systems of the States parties (AMARAL JÚNIOR; VIEIRA, 2016, p. 4). The protocol, however, was never brought about, due to the refusal of Brazilian government. Then, the 1996 Santa Maria Protocol on International Jurisdiction in Consumer Relations established the competent jurisdiction for disputes arising from consumer relations[4] involving States Parties - as a general rule, the forum of the consumer's domicile (AMARAL JÚNIOR; VIEIRA, 2016, p. 5). The agreement, however, could not enter into force, due to the lack of a Common Protocol for its operation.

After unsuccessful initiatives, finally the Interinstitutional Agreement among Member States' Consumer Protection Agencies for the Protection of Visiting Consumers was signed in 2004, establishing a cooperation network among the countries with thepurpose of ensuring assistance to consumers in foreign land by means of the local protection agencies (MERCOSUR, 2004). This agreement enabled the gradual implementation of the Pilot Projectfor Tourist and Visiting Consumer Assistance (BRASIL, n.d.) in the cities of Rio de Janeiro, São Paulo, Montevideo, Punta Del Este, Bariloche, Buenos Aires, Porto Alegre, Curitiba, Natal and Fortaleza (AMARAL JÚNIOR; VIEIRA, 2016, p. 6).

Finally, in December 2017, the Agreement on the Law applicable in International Consumer Contracts was signed, establishing, as Marques (2019b, p. 420) explains, conflict rule of favor[5] for disputes involving international consumer contracts between countries of the bloc. The rule states that the applicable law will be the one elected by the parties[6], provided that it is more favorable to the consumer.

[3] Venezuela was accepted as a Member State in 2012, but its membership was suspended in 2016. The MERCOSUR Associated States are Chile, Colombia, Ecuador, Peru, Guyana, and Suriname. Bolivia, as an associated state, is in the process of joining the bloc (MERCOSUR, n.d.).

[4] "The Protocol was designed to determine international jurisdiction over consumer contracts, delimiting its scope of application to contracts of purchase and sale on credit terms, supply of tangible movable property, provision of services, also including loans and other credit operations. Nevertheless, its article 1 excludes contracts of transportation and has nothing to say about the consumer relations performed by electronic means". (AMARAL JÚNIOR; VIEIRA, 2016, p. 5)

[5] According to the author, the connection factor was inspired by the principle of favor (*Güntigskeitprinzip*), which consists in a real rule of favor, in the benefit of consumers (MARQUES, 2019b, p. 420).

[6] Among the list of options established by the agreement: for contracts concluded in the country of the consumer's domicile, the parties may choose the law of the consumer's domicile, the law of the supplier's domicile, the law of the place of conclusion of the contract, or the law of the place of the enforcement of the obligations. The same options apply to contracts concluded outside the consumer's country of domicile, except for the law of the supplier's country of domicile.

B. Rule of conflict of favor: the most favorable law to the consumer

The Agreement on the law applicable to International Consumer Contracts signed by the Mercosur member States (and open for adhesion by associated States) establishes a measure of cross-border protection which is already recommended in other international agreements.

Marques (2019b, p. 422) explains that the origin of this rule of conflict resides in the 1979 Hague Conference on the law applicable to international consumer contracts, which established limits to the autonomy of the parties in choosing the law, based on the mandatory protection norms of the consumer's country of domicile. In other words, the autonomy of the parties - most often the supplier's - could not deprive the consumer of the minimum protection provided in his country of domicile. The Conference was not signed, but it inspired other agreements, such as the Rome Conference of 1980 (replaced by the Rome I Regulation) (MARQUES, 2019b, p. 423).

The agreement determines in its article 4 the rule of conflict applicable to contracts concluded by the consumer in his country of domicile, especially distance contracts. The law chosen by the parties - by the supplier, if it is an adhesion contract - will be applied, provided that it is more favorable to the consumer. Thus, in case of dispute, the judge must proceed to a comparative analysis between the chosen law and the law of the consumer's domicile and judge which is more favorable to the consumer.

It is interesting to note that the parties have limited autonomyin choosing the applicable law, and only one of the following options may be chosen: the law of the consumer's domicile, the law of the supplier's domicile, the law of the place ofconclusion of the contract, or the law of the place of performance of the contract. If the choiceof law does not meet the criteria set by the article, the law of the consumer's domicile will apply.

Article 5 sets out the conflict rule for contracts concluded by consumers outside their country of domicile. Again, the law chosen by the parties will apply only if it is more beneficial to the consumer, which will be evaluated by the competent judge. In this case, the article further limits the autonomy of the parties, excluding the law of the supplier's domicile from the list of applicable laws. For travel and tourism contracts, however, the agreement determines that the applicable law will be that of the consumer's domicile.

Such a treaty promotes the harmonization of consumer protection measures, leaving no room for "double *standards*" (MARQUES, 2019b, p. 420) to businesses, which could violate rights from consumers in other member states, which would not be able to apply their penalties to foreign suppliers.

Although Mercosur still lacks a common legislation on consumer disputes, the 1996 Common Protocol on Consumer Protection ended up serving as a model for some national legislations which arose afterwards[7]. This leads to the conclusion that there is already a certain harmony in consumer protection within the bloc. Let us look at it in more detail.

In Argentina, the consumer protection rules are established in the *Ley de Defensa del Consumidor* of 1993 and in the *Código civil y comercial de la Nación*. Therefore, it is a subject lacking systematization, resulting thus in the absence of guiding principles (JAEGER, 2019) - differing from Brazilian law. However, a reform bill regarding the *Ley de Defensa del Consumidor* has been in transit since 2019, which promises to systematize the field and, above

[7] Within the bloc, the Protocol influenced the consumer legislation of Uruguay and Paraguay. (AMARAL JÚNIOR; VIEIRA, 2016, p. 2-3)

all, to recognize the condition of hypervulnerability of certain groups of consumers (VIEIRA, 2020).

In Paraguay, only in 1998 was the *Ley de Defensa del Consumidor y del Usuario* sanctioned, under the influence of the Common Protocol on Consumer Protection and Brazilian law.

Indeed, its Article 6 is very similar to Article 6 of the Brazilian Code. Jaeger (2019) notes, however, that it is a more concise and lenient law than the Brazilian one.

Finally, Uruguay was the last country of the bloc to sanction a consumer protection legislation in 2000, called Consumer Protection Law, which is still in force to this day. Also influenced by the Common Protocol as well as by Brazilian law, this legislation has similar characteristics to those observed in the Paraguayan law: a more concise and milder law than the Brazilian one (JAEGER, 2019). The doctrine points out, moreover, even after 20 years of its enactment, a certain resistance of the judiciary in applying the protective norms, often overshadowing them with Civil Code rules (SZAFIR; MARKS, 2019).

It is interesting to note, therefore, that a treaty establishing a connection factor in favor of the consumer meets the spirit of the national legislations of the member States, not resulting thus in such an abrupt intervention in their sovereignty and the autonomy of the parties. Regardless, the relevance of the agreement stands especially for two reasons. Firstly, because of the possibility of adhesion by associated States. And secondly, because defining the level of consumer protection abstractly is less effective, that is, pre-establishing that the applicable law will be, for example, that of the consumer's domicile does not guarantee the best protection and also hinders the harmonizing and integrating effect of the Agreement. The analysis of the most favorable law in the concrete case enables the application of foreign law by the competent jurisdiction, in case it is understood as more beneficial, contributing to the improvement of the standard of consumer protection of that State and to the integration of the countries of the bloc[8].

It is necessary, therefore, to analyze the issue of assessment and application of foreign law by the judge of the forum, in order to verify the means of enforcement of the agreement's goals. The topic will be limited to the analysis of the Brazilian procedural rules.

III. Assessment of foreign law in the application of the conflict rule

A. Rules on the assessment of foreign law by the Brazilian judge

The validity of the Mercosur Agreement on the Law Applicable to International Consumer Contracts raises questions about the rules concerning the knowledge and applicability of foreign law by national judges, especially with regard to possible limitations, which would directly affect the effectiveness of the Agreement.

It is important, initially, to emphasize two principles that are in force in Brazilian Procedural Law: the principle of *non liquet,* by which no dispute submitted to a jurisdiction may remain

[8] Moreover, the bilateral conflict rule of the most favorable law to the consumer seems more interesting than the idea of standardization by means of a protocol, such as the initiative of the Common Protocol, because standardization would only aim at an abstract higher protection, while the conflict rule of the 2017 Agreement ensures the best protection in the concrete case. Favier (2020, p. 385), when highlighting the consequences of the harmonization of consumer law within the European Union, brings the example of the transposition of the directive of redhibitory defects in France. French law had more favorable provisions for consumers, "such as the abolition of the 500 euros fee imposed on victims of property damage and the possibility of maintaining the liability of the distributor of defective products as the main one, while the directive understood it to be only subsidiary to that of the manufacturer.

unanswered, as per article 4 of the Introductory Rules of Brazilian law (LINDB)[9] and article 140 of the Code of Civil Procedure (CPC)[10]; and the principle of *iura novit curia,* by which the judge is responsible for the legal qualification of the facts brought by the parties, regardless of the legal grounds alleged by them.

At this point, it should be noted that the Brazilian doctrine generally considers the content of foreign law as a matter of law (GARCIA; COSTA, 2018, p. 168) - and not as a matter of fact, subject to proof - since the application of foreign law comes from the command of the Brazilian rule of private international law, which established the connection factor for that situation. Thus, the judge is responsible for defining the content of the foreign rule (*iura novit curia*), from which he cannot be exempted (*non liquet*). Moreover, it should be mentioned article 408 of the Code of Bustamante, by which "*the judges and courts of each contracting State will apply, of their* ***own motion****, when they proceed, the laws of the others, without prejudice to the evidential means which this chapter refers to*" (our emphasis). Therefore, the judge must apply the foreign law ex officio.

However, the judge's obligation to know the law is limited to the national law, as taught by article 367[11] of the CPC with article 14[12] of LINDB. Therefore, the judge must apply the foreign law applicable to that legal situation, but he may ask the party that claims it to prove the content and validity of that law.

This understanding is compatible with the Principle of Non-Surprise, as established by the current CPC, which prohibits decisions rendered without the parties being able to anticipate their content. Moreover, this principle is in accordance with another one: the Adversarial Principal, by which the parties must have the opportunity to speak about any evidence or grounds that affect the decision on the dispute. Garcia and Costa (2018, p. 167), when addressing this issue, concluded:

> Thus, although the application of foreign law *per se* occurs ex officio, the reasons that lead to its application must be the subject of an effective discussion between the parties. This factual substratum may refer, for example, to the place of domicile of the party (connecting factor) in the discussion about the law applicable to movable objects (article 8, § 1, LINDB).

The question remains, however, about the extent to which the national judge is required to know the foreign law. The authors (GARCIA; COSTA, 2018, p. 163) criticize the use of subjective criteria such as "personal effort" or "free knowledge" of the judge about the alien law, since it would be a criterion devoid of any legal certainty:

> However, conditioning the ex officio application of foreign law to a subjective condition linked to the judge is contrary to the most basic legal principles. Assuming that the impact of the judge's prior knowledge andpersonal conditions are relevant, *the application of a foreign law would be subject to a lottery*: if for the judge Gaius, who has just returned from a post-graduation course in Germany, Germanic rules would be applicable; if for Tício, who is unfamiliar with Teutonic language and law, the rules of the forum would apply. Furthermore, Portuguese law would be easier to apply, due to linguistic and cultural proximities, than Thai or Kyrgyz law. *A system that makes the ex officio applicability of foreign*

[9] Art. 4o When the law is silent, the judge will decide the case in accordance with analogy, customs and generalprinciples of law (BRASIL, 1942).
[10] Art. 140: The judge is not exempt from deciding under the allegation of legal vacuum or obscurity of the legal system(BRASIL, 2015).
[11] Article 376. The party that alleges municipal, state, foreign or customary law shall prove its content andvalidity, if the judge so determines (BRASIL, 2015).
[12] Article 14: If the judge does not know the foreign law, he may require the invoker to prove the text and validityof it (BRASIL, 1942).

> *law dependent on the subjective characteristics of the judge can only do so in flagrant disrespect towards isonomy and legal security* (our emphasis).

On this point, the authors suggest that, due to all the principles already mentioned, in addition to the duty of cooperation[13] established by the CPC of 2015, the parties should collaborate with the judge in the assessment of the foreign law, since it would be unreasonable to expect the judge to undertake such task for the resolution of a single case in a country with such a high number of claims as Brazil.

However, this solution may prove problematic, especially in consumer litigation,because the legal evidence brought by the parties has no guarantee of impartiality, and the judge must, in any case, be able to judge the relevance and validity of the grounds raised. Moreover, in a dispute involving the supplier and the consumer, the supplier will be in an advantageous position, having more technical and financial means to "prove his right".

Thus, guaranteeing the judge the means of assessment of foreign law is an essential measure for the application and effectiveness of the conflict rule established in the Mercosur Agreement of 2017.

At this point, it is important to mention the means of international cooperation provided by the Brazilian legal system. Article 409 of the Bustamante Code establishes that the party that invokes the application of foreign law may prove it "*by means of a certificate from two lawyers practicing in the country whose law is in question, which must be duly legalized*." And as for the judge, it establishes the possibility of requesting diplomatic cooperation with the country of the foreign law to be applied - "they *may, ex officio, before taking a decision, request, through diplomatic channels, that the State whose law is involved provide a report on the text, validity and meaning of the applicable law.*" - in case the judge considers the party's evidence insufficient, or it is not brought to court.

With the exception of Brazil, the Mercosur member States have never ratified the Havana Convention, which gave rise to the aforementioned Code. However, Argentina, Brazil, Colombia, Ecuador, Guatemala, Mexico, Paraguay, Peru, Uruguay, and Venezuela have ratified the 1979 Inter-American Convention on General Rules of Private International Law, which establishes the *ex officio* application of the foreign law indicated by the conflict rule. Thus, these countries recognize the legal nature of foreign law, whose content or proof will be made according to the means established in their legal systems (MONACO, 2020, p. 143).

It is also worth mentioning the new instrument of international judicial cooperation established in the 2015 Code of Civil Procedure: the direct assistance, through which the foreign judicial authority may request information about the Brazilian legal system[14]. According to Polido (2018), such measure represents a true modernization of the Brazilian civil procedure regarding international cooperation practices and the ideal of "global justice". This instrument, because it does not require a *juízo de delibação*[15][16], enables a more agile means for exchanges

[13] Art. 6 All parties must cooperate with each other to obtain, in a reasonable time, a fair and effective decision on the merits (BRASIL, 2015).

[14] Art. 30. In addition to the cases established in treaties to which Brazil is a party, direct aid will have the following objectives: I - *obtaining and providing information on the legal* **system** and on administrative or jurisdictionalprocesses which have been concluded or are in progress; (...) (BRASIL, 2015).

[15] *Juízo de delibação*: a superficial judgment on the legality of an act, without, however, entering into an examination of merit. Example: homologation of a foreign judgment by the STF, examination of the legality of administrative acts by the Judiciary.

[16] Direct aid is appropriate when the measure does not derive directly from a decision by a foreign jurisdictional authority to be submitted to a *juízo de delibação* in Brazil (BRASIL, 2015).

between judicial and administrative authorities. This is the result from the recognition by the Brazilian legislator of the undeniable importance of cross-border litigation in an increasingly globalized world.

Notwithstanding the mechanisms already provided by the Brazilian legal system for the judge to assess foreign law, as well as for the provision of information on international cooperation, this article is concerned with the means available to the court to assess the content of the foreign law. For, although the conflict rule set by the 2017 Mercosur Agreement indicates the most favorable law to the consumer, which could lead the judge to apply any provisions brought by him or her, the concern remains with regard to the verification of the grounds. This article concerns about the reliable sources of foreign law available to the judge.

We will thus mention some examples of support mechanisms for courts in the assessment of the content of foreign law in operation in Switzerland and Germany, namely, the Swiss Institute of Comparative Law and the Max Planck Institute for Private International and Comparative Law.

A. *Expert* Institutes in Foreign Law

If the judge is deemed capable of saying which law is more favorable to the consumer,the law of the forum or a foreign law, he is presumed, therefore, to know (or be capable of knowing) this foreign law.

As we have seen, Brazilian law has several regulations governing the means of international cooperation and proof of foreign law. However, the mechanisms recommended by the CPC and by the Bustamante Code have some limitations, notably: the limited access only to judges, on the one hand, and the quality of the information provided, on the other. In the case of requests for assistance through diplomatic channels or international cooperation, the quality of the information provided by the judicial authority may be incomplete, since it may be resigned to informing an abstract rule, ignoring all the legal nuances of the concrete case. And yet, regarding the quality of the information, in the case of proof of the right by means of a certificate issued by two lawyers working in the foreign country, as established in the Bustamante Code, we shall question the partiality of this evidence.

Thus, it should be addressed another mechanism for benchmarking foreign law, which already operates in other legal systems: the specialized institutes of comparative international law, which provide specific opinion services for courts on foreign law.

The Swiss Institute for Comparative Law, established by the *Federal Act of 28 september 2018*, acts as a research and documentation center for foreign and internationallaw. It has a library with more than 400,000 monographs, periodicals, and an important number of databases on almost every legal order in the world (URSCHELER, 2020, p. 124- 125). It offers not only official legislative sources, but also publications on case law and doctrine. The library is open to the public and enables individuals and professionals to learn about foreign laws, provided they master the language required in order to access them. Above all, the Institute acts as an *expert* organization, providing information and legal opinions to courts and the administration. To this end, the Institute relies on a *staff* trained in foreign countries (PRETELLI, LALANI, 2017, p. 390), as well as on the recognition of its independence and scientific impartiality before the courts (USRCHELER, 2020, p. 131). Urscheler (2020, p. 121) understands that the service provided by the Institute, as well as the clarity and precision of the Swiss Code of Private

International Law, explain the recurrent application of foreign law in the country.

In Germany, the *Max-Planck-Institut für ausländisches und internationales Privatrecht (MPI)* plays a similar role. It is interesting to note that the Institute was created in 1926 in Berlin, in the post-World War I context, when the performance of the Mixed Arbitration Courts[17] under the Treaty of Versailles required the urgent emergence of the service of *experts* in foreign law (REMIEN, 2017, p. 191). Since then, the Institution has acquired great prestige, so much that its opinions are preferable to those of the German Ministry of Justice (REMIEN, 2017, p. 196). Expert opinions ("*Länderreferenten*") provide carefully collected information directly linked to the case. However, these services tend to be costly and slow, as the institute functions primarily as a research center. Many *expert* opinions from MPI and other institutes are published annually in the collection "*Gutachten zum internationalen und ausländischen Privatrecht*" (REMIEN, 2017, pp. 197-198).

Hence, the authors suggest that a Latin American Institute of Comparative Law would be an interesting structure to complement Mercosur's institutional framework. This institute would guarantee a reliable source on the national laws of the member States and its associated countries, in addition to providing an opinion service to judges. This means of proof of foreign law would have the advantage of providing specific and thorough answers to the concrete case, in comparison with the request for direct assistance through diplomatic channels, since they would be carried out by experts. Furthermore, in comparison with the certification provided by the parties by lawyers working in the foreign country, the opinion of the institute would be impartial, contributing thus to a legitimate judicial outcome.

Also, a Comparative Law Institute specialized in Latin America would strongly contribute to the integration of the bloc members, since it would certainly strengthen the application of all existing treaties and conventions, in addition to fostering academic exchange among the countries.

IV. Concluding remarks

The Mercosur Agreement on the law applicable to international consumer contractsrepresents a major advance in global justice and protection of individuals against the abuse from markets. The conflict rule established by the agreement has the power not only to raise the level of consumer protection in all ratifying countries, but also to foster the integration of member and associated States. To this end, the agreement places on the judge the task of performing a real comparative analysis before deciding on the law applicable to the contract.

From the analysis of this article, it was possible to obtain an overview of the instruments legally established in Brazil which aim to assist the judge in the discovery of foreign law. Although cooperation and assistance are expected from the parties in this process, it is the judge's duty alone to determine what the content of the foreign law is. To do so, he must have access to reliable and thorough sources in order to make an informed decision in accordance with the foreign law. This article has presented the mechanism of expert institutes, which count on trained lawyers in foreign

[17] "*The Allied and Associated Powers did not entrust the German, Austrian and Hungarian courts with implementation of the substantive provisions of the peace treaties as they mistrusted the willingness of these courts to fully implement the one-sided regimes of the peace treaties. Under the national applicable jurisdictional rules, these courts were competent to address private law issues regarding assets located on their soil. Instead, the peace treaties established a self-standing court system, the Mixed Arbitral Tribunals (articles 304 VPT, 256 TPSG, 187 TPN, 239 TPT)*" (REQUEJO ; HESS, 2018, p. 7)

law, who prepare thorough and impartial opinions for the courts, such as the Swiss Institute of Comparative Law and the Max Planck Institute for Private International and Comparative Law.

Finally, we conclude with the suggestion of creating a Latin American Institute of Comparative Law, which would not only compensate this absence of reliable sources of foreign law, but also contribute to the integration of State members of Mercosur and its associates. We understand that the guarantee of these sources would allow the application of the 2017 Mercosur Agreement to reach its full potential as a protective and integrating norm.

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