

Consumer Rights in Colombia: Jurisprudential Analysis

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Abstract

The consumer is the end of all economic activity, but it is the weak part of the consumer relationship. Therefore, there are consumer rights, for which the State must make them enforceable and effective, in favor of mitigating the mistrust between producers and consumers. In this sense, this article aims to examine the treatment and development of consumer rights by the Constitutional Court of Colombia through jurisprudence. Methodologically, the text is supported by the interpretive paradigm and the study is approached from the documentary method, based on theoretical and conceptual references on consumer rights. The analysis concludes that the Constitutional Court of Colombia, from 1994 to 2022, has carried out a solid and concise examination of consumer rights, where, in general terms, it has not changed its position, but rather, on the contrary, it has made significant contributions that are considered an advance against the aforementioned rights, in favor of correcting evidenced asymmetries in the market and derived, among other circumstances, from differences in terms of economic capacity and possession of information. of consumers.

Keywords: consumer rights, individual rights, collective rights, jurisprudence analysis, Constitutional Court.

INTRODUCTION

The production process is made up of the phases of production, distribution and consumption of goods and services, depending on the availability of resources. Consumption allows human beings to satisfy needs of various kinds. However, consumption has become more than just a stage of economic activity, since it is also a social function to which people allocate significant resources, while contributing to the construction of our identities and ways of relating to others, according to Rodríguez (2012). In this area, we even reach consumerism, understood as an extra-economic value that involves acquiring goods and services considered non-essential for survival, a situation that is more recurrent in advanced societies, where people have higher levels of material well-being. This is the panorama of the so-called consumer society, characterized by the massive demand for goods and services at levels much higher than those required to survive, the increase in the speed of the consumption cycle, products are not always

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designed to last and consumption becomes a way of life. according to Rengifo (2022), at the same time that this society generates environmental, cultural and socioeconomic problems.

Consumption, both private and public, is a component of gross domestic product, while the other elements are investment and the balance between exports and imports of goods and services. This means that, the higher the consumption, the more relevant is the total value of the final goods and services that are produced within the geographical limits of a territory, as an expression of the growth of productive activity. In this context, there are markets, understood as physical or virtual spaces where the exchange of goods and services for money takes place, fundamentally. However, markets can generate risks for consumers and users, which is why their special protection is required, established in international and national standards, with the understanding that the consumer is the purpose of all economic activity. The consumer relationship, in which the producer, supplier and distributor is the strong party, and the consumer, the weak one, justifies the existence of consumer rights, for which the State must make them enforceable and effective, in favor of mitigating the mistrust between producers and consumers. This situation is all the more significant due to the expansion of fundamental rights and the social market economy regime, a model implicitly enshrined in the Colombian Constitution.

The purpose of the social market economy is to combine the needs of economic freedom with social justice, and recognizes the state and the market as two complementary institutions that are integrated for the benefit of social welfare. This economic model is based on structural economic principles, aimed at guaranteeing the scope of economic freedom, and regulatory principles, whose role is to prevent possible abuses of economic freedom and ensure that the benefits generated in the market are disseminated in a socially just manner. In line with the above, it should be noted that the set of articles of economic content of the Political Charter of Colombia makes up the so-called Economic Constitution, based on two principles: political neutrality and subsidiarity. Political neutrality means that, rarely, the economic model or the specific political-economic orientation can be deduced from the constitutional text, since this is entrusted to the legislator to give a specific meaning to the guidelines of the supreme law, according to Bandell (2000, cited by Peña & Martínez, 2018, p.3); while the principle of subsidiarity justifies State intervention in the economic sphere.

In relation to the above, the Political Charter establishes the principles of the economic system, among which are the right to property, the right to work, the right to free enterprise and State intervention through economic policies. These principles should allow for the development of a legal system that controls the relations between economic actors and the State, as an expression of the link between constitutional economic law and competition law, and even consumer law. The Political Constitution of Colombia, in harmony with the social rule of law, included the rights of consumers and users within the title of rights, specifically with regard to collective rights and the environment, specifically in article 78, assigning to the legislator the regulation of the quality of goods and the information that must be provided to the public for marketing. For this reason, we present a conceptual approach to consumer rights below. Next, we address the jurisprudential analysis of the matter.

A CONCEPTUAL APPROACH TO CONSUMER RIGHTS

Consumer rights are a collective category. However, these rights recognize subjective and collective legal positions, by virtue of the fact that the consumer is the individual and collective protagonist of the act of consumption. It is pertinent to specify that Law 1480 of 2011, article 5, numeral 3, states that the consumer or user is:

Article 5, paragraph 3. Any natural or legal person who, as the final recipient, acquires, enjoys or uses a certain product, whatever its nature, for the satisfaction of its own, private, family or domestic and business need when it is not intrinsically linked to its economic activity. The concept of consumer shall be understood to include that of user.

This definition leads us to distinguish between the legal concept and the material concept of consumer. The legal consumer is the party who enters into the contract outside of his or her professional or business activity, while the material consumer is the person who makes effective use of the good or service, whether it is the contracting party himself, his family or whoever uses the good or service in the domestic sphere, according to Rengifo (2022). On the other hand, although legal regulations address the terms user and consumer as synonyms, Barreto (2022) gives them a differential treatment by establishing that the user does not go to a supplier or producer, their relationship is mandatory and the range of offers is minimal, in addition to not carrying out direct acts of will or aimed at validating the provision or its modifications and receives an essential service for their life, in which fundamental rights are linked.

Article 3 of Law 1480 of 2011 recorded the duties and rights of consumers. In reference to the duties of the consumer, we can point out the following: to be properly informed, to act in good faith and to act as a citizen in matters of recycling. In terms of consumer rights, we identify the following: product quality, safety, receiving information, right to receive protection against misleading advertising, right to complain, contractual protection, election, participation, representation, right to inform, right to education, right to equality and habeas data.

Consumer rights, as collective rights, are part of fundamental rights because they are of constitutional rank as they are directly incorporated into the Political Charter. In practice, these rights can be violated by the action or omission of public authorities and individuals, which is why consumers make use of the mechanisms established for their effective protection, including the contentious-administrative procedure and popular, group and tutela actions.

In line with the above, Article 56 of Law 1480 of 2011 set forth the jurisdictional actions for consumer protection, which include class and group actions, liability actions for damages due to defective products, defined in said Law 1480, which must be brought before the ordinary jurisdiction, and consumer protection actions. whereby contentious matters based on the violation of consumer rights due to the direct violation of the rules on consumer and user protection will be decided. Product liability and consumer protection actions are individual and protect personal rights.

It is for this reason that consumer law has two axes on which the tools of protection extend: collective protection and individual protection. These axes are also supported by a public component and a private component, with the understanding that the two means of protection must be exercised by state agents or by consumers, in accordance with Villalba (2022). Thus, the State's collective protection is carried out through administrative investigations by some superintendencies and popular actions initiated by the Public Prosecutor's Office. Private collective protection is enforced through class actions brought by individuals, while private group protection is carried out through group action brought by individuals. Finally, private individual protection is embodied in consumer protection actions by the Superintendence of Industry and Commerce and ordinary judges, and product liability actions by ordinary judges.

Notwithstanding the above, the constitutional categorization of consumer rights as collective rights and the established judicial action mechanisms are not effective, in addition to not responding to the needs and realities of contemporary consumers who live in a globalized world in economic, technological, political, social and cultural terms. For

this reason, Herrera (2013) considers that consumer rights should be framed within the fundamental social rights with individual ownership, since it is based on an economic concept of a person who acts to satisfy his or her own needs, that is, all citizens are consumers, as John F. Kennedy pointed out to the United States Congress on March 15, 1962. But it is not a collectivity that enjoys the benefit of a particular good or service. In this sense, consumer rights tend to protect individual consumers and the preservation of the market, generating a link between law and market, a situation that justifies the categorization of consumer rights as fundamental social rights, characterized by protecting members of society in aspects such as possession, production, administration and distribution of goods, according to Todoli (2000, cited by Herrera, 2013, p. 44).

METHODOLOGY

The article addresses theoretical elements on consumer rights, while examining the jurisprudential development of the Constitutional Court of Colombia to identify the traceability that it has given to the subject in its pronouncements, which is why the text is installed in the interpretative paradigm. The study is based on the documentary method, consisting of a technique of selection and compilation of information that allows systematic observation and reflection on a theoretical reality, using different types of documents. For this reason, jurisprudence, legal norms and doctrine were consulted, as fundamental inputs that support the developed matter. In this context, when analyzing the judicial rulings issued by the closing body of the constitutional jurisdiction, where it has ruled on consumer rights, especially in terms of conceptual progress, it was possible to show that from 1994 to 2022, twenty-one judgments have been issued in this regard, namely: thirteen on constitutionality and eight on protection.

RESULTS AND DISCUSSION

From the jurisprudential analysis, it was possible to evidence different constitutional scenarios, according to the following line of jurisprudence.

Judgment C-524 of 1995 — Founder of the line. In the present judicial order, the plaintiff filed a claim of unconstitutionality in the exercise of his political right in defense of the Constitution, alleging the confrontation between Article 19 of Law 30 of 1986 and Articles 1, 2, 78 and 83 of the Constitution. The plaintiff alleged that the transmission of advertisements for alcoholic beverages, cigarettes and tobacco on sound broadcasting stations, television and film schedulers goes against the above-mentioned superior articles, since Colombia, as a social State governed by the rule of law, must ensure the general interest in this regard. community. In addition, he mentioned that the media that agree to advertise such products do so taking into account the economic factor that it would eventually represent for them, instead of thinking about the damage that this may cause to the population by departing from the postulates of good faith.

In relation to the charges brought by the applicant, the following scenarios were raised: (i) the advertising of products harmful to health – alcoholic beverages, tobacco, cigarettes, etc. – is in fact contrary to the social rule of law, the essential purposes of the State, the rights of the consumer and the act in good faith on the part of individuals and public authorities in encouraging the consumption of such advertised products, On the other hand; ii) the non-advertising of these products could constitute scenarios of violation of consumer rights (Article 78 of the Constitution), limitation of freedom of enterprise (Article 333 above) and censorship.

Prior to the adoption of a decision on the merits in the face of an obvious confrontation between these two norms —the contested norm and the Political Constitution—, the Constitutional Court carried out a judicious study of the rights of the consumer by linking

itself directly to the law against which the charges were formulated —Law 30 of 1986, Article 19. Thus, with regard to consumer rights, the Constitutional Court pointed out that the eventual declaration of unenforceability of the challenged regulation could generate scenarios of violation of rights, due to the fact that before an advertisement of harmful substances, article 17 of the same challenged regulation establishes what are the prerequisites for advertising such products. In addition, the closing body mentioned that, in accordance with Article 78 above, producers are responsible for their products in relation to the quality of the goods and services they offer and in such advertisements, they must warn of their harmfulness – as had been done. In this order of ideas, such advertising allows the consumer, autonomously and independently, in order to protect and guarantee his rights against the products offered, to decide whether or not he really wants to acquire the harmful substance, even if he is aware of its side effects.

In conclusion, the fact that products harmful to health are advertised, such as: (i) alcoholic beverages; (ii) tobacco; and (iii) cigarettes, does not mean an exhortation to the public to consume them; on the contrary, it represents a reaffirmation of the rights of the consumer enshrined in article 78 of the Political Constitution, since the consumer is provided with information on the quality and type of product that is being offered so that it is the consumer who autonomously decides whether or not to consume the product. Finally, and in accordance with the arguments outlined above, the Constitutional Court decided to declare the enforceability of the challenged rule.

Judgment C-215 of 1999. In the present judicial order, the plaintiffs filed constitutional charges against Law 472 of 1998 — which develops Article 88 of the Political Constitution with respect to class actions and group actions — arguing that certain articles of the challenged law were unconstitutional due to legislative omission and for violating the right to the administration of justice by establishing expiration terms for actions.

In order to provide a solution to the specific case, the Constitutional Court reviewed the background of the actions enshrined in article 88 of the Constitution in order to clarify the nature and purposes pursued by such actions. With regard to consumer rights, the closing body of the constitutional jurisdiction indicated that these actions are mechanisms for the protection of the right established in article 78 of the Political Constitution, since they are collective rights. In this vein, the Corporation pointed out that group actions — also known as class actions — are those in which a plurality decides to go to court with a view to obtaining compensation for the common and at the same time particular interests of specific sectors of the population — e.g., consumers, individualizing the damage and the compensation sought. In addition, the Court mentioned that there are class actions regulated by special laws, such as: (i) consumer protection (Decree-Law 3466 of 1982, now repealed); (ii) public space and the environment (Law 9 of 1989), which refers to the popular action established in the Civil Code (article 1005); and (iii) unfair competition (Law 45 of 1990). Finally, in the ruling it was stated that according to Article 4 of Law 472 of 1998, the rights of consumers and users, in addition to having constitutional status in themselves, are collective rights and interests.

In accordance with the Corporation's statements: (i) consumer rights are declared collective rights and interests in accordance with Article 4 of Law 472 of 1998; (ii) the appropriate mechanism for claiming consumer rights is a class action when seeking compensation; and (iii) there are special class actions regulated in the aforementioned regulations. In this vein, the majority of the Constitutional Court declared the articles in question to be enforceable. On the other hand, it recused itself from ruling on the unconstitutionality of the entire norm and of Article 33 of the norm in question, declaring the unenforceability of certain expressions contained in the norm.

Judgment T-333 of 2000. In the present mechanism for the protection of fundamental rights, the plaintiff argued in his writ of protection that the National Federation of Panela

Producers (FEDEPANELA) was violating his rights to honor, good name and due process, since the defendant is not responsible for carrying out quality checks against the panela produced by Panela del Valle EAT —of which, The plaintiff was a manager—and consequently, it is not entitled to impose pecuniary penalties on the company of which the plaintiff was the manager.

To resolve the specific case, the Corporation made certain considerations related to consumer rights. In this regard, he pointed out that the consumer in relation to the producer/supplier is in asymmetry due to the fact that the latter's knowledge of the product is greater, in addition, they could omit the disclosure of necessary information for the consumer with a view to deciding whether or not they really want the product that is being offered to them due to the negative effects that it could generate on their health. That is why consumers have a constitutional right to access detailed and relevant information about the composition and effects of goods and services entering the market. In addition, the closing body of the constitutional jurisdiction stated that consumer rights are diffuse, in that understanding, they can only be actively exercised if adequate and timely information is available. Finally, the Constitutional Court decided to revoke the judgments under review on the understanding that the plaintiff's fundamental rights to the plaintiff's good name and honor would not be protected, but on the contrary, the right to due process was protected.

Judgment C-1141 of 2000 — Landmark judgment. The plaintiffs in the exercise of the public action of unconstitutionality partially sued Articles 11 and 29 of Decree-Law 3466 of 1982 — formerly the Consumer Statute, currently Law 1480 of 2011 — mentioning that they violate Articles 78 and 229 of the Constitution by placing the responsibility for the minimum guarantee on the suppliers or vendors and by allowing the affected consumer to request the guarantee from the supplier or vendor.

In order to adopt a position on the challenged norms, the Constitutional Court studied the rights of the consumer, where it stated that these rights are not exhausted by the simple fact of acquiring goods and services offered in the market with a view to satisfying their needs. In addition, the Corporation mentioned that consumer rights have a multifaceted character, referring to the substantial, procedural and participatory. On the other hand, what was related in the analyzed Judgment was reiterated, referring to the inequality found in the positions of consumer-vendor/supplier. Concomitant with this real asymmetry, the Constitutional Court mentioned that the mandate of the Superior Law on Consumer Rights – Article 78 – seeks to restore that equality vis-à-vis market actors. In short, thanks to the constitutional norm, which is responsible for delimiting a field of protection, different regulations related to consumer rights were developed in the legal system in order to seek effective protection against their rights.

Likewise, the closing body of the constitutional jurisdiction related that the vendor/supplier must guarantee conditions of quality and suitability with respect to the good or service offered to the consumer and the legislator did not intend in the specific scenario to annul the responsibility of the producer due to the quality of the products or services offered, but to determine appropriate procedures to enforce their rights. In this vein, if consumers are assured of their rights, but not a way to protect them in scenarios beyond the minimum guarantees of product quality, it would be in itself an incomplete protection because these prerogatives of users also imply information and participation. In addition, the defect in the products purchased by consumers could eventually affect their life, integrity and health. In accordance with the above, it is necessary that, in addition to guaranteeing the rights of consumers, there is a mechanism for protection and compensation for the damage caused, in order to guarantee the safe use or consumption of the products purchased by the consumer. Finally, the Constitutional Court declared the conditional enforceability of the challenged provisions on the understanding that producers can also be taxable persons in the event of compliance with guarantees.

Judgment T-466 of 2003. In this judgment, the judicial orders issued by the Civil Cassation Chamber of the Supreme Court of Justice and the Labor Cassation Chamber of the same Corporation were reviewed, where action was taken against the Civil Labor Chamber of the Superior Court of Popayán for the purpose of protecting the fundamental rights to due process and equality of the plaintiff —the company Panamco Colombia S.A.—. unknown in the judicial order that resolved a class action brought by Mario Sagid Mosquera Bolaños on behalf of his son and Pedro Julián Infante Montero against the plaintiff of the guardianship.

In order to understand the rulings on the merits of the tutela action by the Corporation, the background and actions of the file are outlined below.

Background to the tutela action: on the popular action. The actors of the popular action – Pedro Julián Infante Montero and Mario Sagid Mosquera Bolaños on behalf of their son, Mario Sagid Mosquera López – bought a one-liter bottle of coca-cola. At the time of consuming the product, they realized that there was a foreign body inside, so they refrained from uncovering it and consuming it. In view of this situation, the father of the minor asked Panamco Colombia S.A. for a solution to the situation presented. The defendant responded that they would carry out internal reviews in order to determine what were the causes that generated the presence of a foreign body in their products. In addition, in its response, the defendant invited Mr. Mario to present the product at the commercial unit located in the city of Cali, in order to carry out the corresponding quality control examinations. However, Messrs. Pedro Julián and Mario Sagid, on behalf of their minor son, filed a class action against Panamco Colombia S.A. in order to protect the collective rights to public safety and health, to safety and prevention of technically foreseeable disasters, to the enjoyment of a healthy environment, and the rights of consumers and users to a presumed minimum guarantee. Subsequently, the defendant opposed the claims, arguing the inapplicability of the action in the specific case, the absence of damage or threat to the rights allegedly violated by Panamco Colombia S.A.

By judgment of August 2, 2002, the Third Civil Court of the Circuit of Popayán denied all the claims in the application. Subsequently, the plaintiffs challenged the decision where the Civil Labor Chamber of the Superior Court of Popayán revoked the judgment of the a quo, and ordered Panamco Colombia S.A. to install an electronic inspection machine to obtain total assurance of the quality of the product in order to cease the danger to the collective interests and rights of consumers within a period of one month.

Of the tutela action. Taking into account the background developed above, Panamco S.A. considered that the violation of the fundamental right to due process originated from the failure to comply with rules not applicable to the specific case (substantive defect) and from having adopted the decision on insufficient evidence (factual defect) since it was the laboratory analysis carried out on the bottle that gave rise to the dispute and the expert evidence carried out on the city's litre soft drink production line of Cali, failing to analyze that the contents of the bottle were not harmful to consumption, in addition to examining how many products had the same characteristics on the market. Finally, the plaintiff stated that this bottle constitutes 0.00015% of the bottling company's daily production. In sum, the plaintiff mentioned that the decision adopted by the Court was illogical in granting one month to install the corresponding machine, instead of requesting its immediate closure in order to protect the community. In addition, the plaintiff mentioned that her right to equality was violated by imposing sanctions and burdens on her through an improper judicial process.

Instance failures. In the first instance, the Civil Cassation Chamber of the Supreme Court of Justice denied the claims of the tutela arguing that the decisions taken by the ad quem of the class action were in accordance with the law, in relation to the collective interests and rights of consumers. Subsequently, Panamco Colombia S.A. challenged the ruling issued by the Civil Cassation Chamber of the Supreme Court of Justice, reiterating the

arguments of the writ of protection. In the second instance, the Labor Cassation Chamber of the Supreme Court of Justice upheld the ruling of the a quo, on the grounds that the tutela action is not a "third instance" and, therefore, cannot be used as an object to render invalid judgments or judicial orders, since this would disregard the principles of res judicata and the autonomy of judges.

Seat of review of the Constitutional Court. With regard to the collective rights and interests of consumers, the closing body of the constitutional jurisdiction pointed out that Article 4 of Law 472 of 1998 set forth some rights that could be protected by means of popular action, whose legitimacy corresponds to any person, since they are rights of the community, among them, those of the consumer. These mechanisms previously existed in the legal system, but the 1991 Constitution elevated them to constitutional status.

In the specific case, the Constitutional Court reiterated that producers, suppliers and retailers are guarantors of providing products that have minimum quality and that they are responsible in case of not complying with those minimums required by law and that they violate the rights of consumers by being a detriment to their health and safety. In conclusion, the fact that, as the plaintiff pointed out, the foreign body found in its product does not constitute a possible harm to the consumer's health, does not mean that the minimum guarantees that the consumer, as a supplier, must ensure to its consumers, should be disregarded. In this regard, users and consumers have the right to: (i) ensure that the products they consume comply with minimum quality guarantees; and ii) to claim through the constitutional and legal mechanisms provided by the legal system to demand compliance with their consumer rights in the event that the producer, supplier or retailer fails to comply in order to hold the latter responsible for an effective solution to that transgression. Finally, the Court upheld the lower court rulings handed down by the Civil and Labor Cassation Chamber of the Supreme Court of Justice.

Judgment C-116 of 2008. In the exercise of the public action of unconstitutionality, the plaintiffs partially sued Article 46 of Law 472 of 1998 against Articles 1, 2, 13, 84, 88 paragraph 2, 89, 228 and 229 of the Political Constitution of Colombia.

The charges raised by the plaintiffs are broadly discriminatory due to the requirement of a group of twenty people to be included in order to access the action, in addition to the fact that the rule implies conditions of inequality in relation to access to justice, since there is a limitation to this right as there is no objective reason to adopt such a decision. With a view to deciding whether or not the law is enforceable, the Constitutional Court, with regard to consumer rights, carried out a study on popular and group action as a mechanism for the protection of consumer rights. From this study, it was concluded that class action is the ideal mechanism for consumers to claim their rights without presuming that the administration of justice has been exhausted. In examining the background of the 1991 Constitution, the Constituent Assembly proposed a mechanism for the defense of collective rights for the satisfaction of common needs, which led to the consecration of the actions under study in the present lawsuit as a mechanism that would repair the moderate damages inflicted on broad sectors of the population, such as consumers.

What the action in the original proposal in agreement with the delegate Guillermo Perry was the enunciation of the rights of the consumer as the capacity of compensation for collective damage through which an action before the courts could condemn a certain producer, distributor or distributor for a collective injury inflicted by him on a large number of people in a similar way. It can be concluded that collective rights and interests, specifically, consumer rights, were a key object in the discussions of the Constituent Assembly in order to provide real protection to these subjects by elevating these rights to constitutional rank, in addition to proposing mechanisms for their protection in the event of a possible scenario of violation or threat to these rights. Finally, the Constitutional Court declared the conditional enforceability of the section in question on the

understanding that twenty or more people do not have to intervene in the action as long as the affected population can be identified in the brief.

Judgment C-750 of 2008 – Laws approving international treaties. In the exercise of the formal constitutional review, the Constitutional Court assessed that the law approving an international treaty concluded between the Republic of Colombia and the United States of America that seeks a trade promotion agreement between the contracting parties complies with and is in line with the domestic legal system.

In order to declare the possible enforceability of the law under consideration, the Constitutional Court examined: (i) the timely submission of the international instrument together with the approving law; (ii) the validity of the representation of the Colombian State in the processes of negotiation and conclusion of the agreement as the competence of the official who signed it; (iii) the initiation of the proceedings in the corresponding chamber; (iv) publications made by the Congress; (v) adoption in the first and second debates; (vi) compliance with the terms between discussions; (vii) the deliberative and decision-making quorum, such as majorities; (viii) announcement prior to voting; and (ix) the sanction of the Government.

With regard to consumer rights, the Corporation referred to the fact that it is a great guarantor of the health and well-being of consumers of the goods and services offered in the market. In addition, it ruled on the limitation of the freedom to conduct a business — article. 333 superior — against the protection of consumer rights, reiterating Judgment C-332 of 2000, which refers to the protection of the public interest. From the above, it can be concluded that the State is indeed the guarantor of consumer rights and it is an issue reviewed with a magnifying glass in the scenario of declaring the enforceability of different norms, such as in the review of specific cases that have to do with the alleged violation of these rights, as well as the limitation that the State imposes on all those companies in the interest of protecting consumer rights in connection with the public interest and fair order, taking into account the repeated "real asymmetry" between market actors. Finally, the Corporation declared the enforceability of the law approving the International Treaty entered into by Colombia and the United States, as well as the agreement itself together with its annexes.

Judgment C-749 of 2009. In the present judicial order, the plaintiff partially sued Articles 1, 2 and 4 of Law 1086 of 2006 for violating Articles 13 and 39 of the Constitution, by stating that, in the Colombian Confederation of Consumers, as part of the Consumer Leagues and Associations, law students may carry out their practice. The reason on which the plaintiff based herself was that, since there are other Consumer Leagues and Associations, only law students are allowed to provide legal advice in the aforementioned one. Additionally, the plaintiff pointed out that the student who provides legal advice as a student internship would have to be associated with the Confederation.

With regard to consumer rights, the Constitutional Court reviewed the 1991 Constitution, where, since its enactment, the rights of consumers and users have enjoyed a different connotation by recognizing unequal differences in the market with respect to the producer, distributor and retailer vis-à-vis the consumer and user. Thus, the valuable task of regulating the quality control of goods and services offered and provided to the community was delegated to the legislator. In addition, the Corporation studied the right of association of consumers and users, where it insisted on the level of inequality in which consumers and users find themselves in their condition as purchasers of products due to the lack of expertise and sufficient knowledge about the product they are buying.

In relation to the above, the Corporation explained that one of the facets in which the exercise of the collective rights of consumers is expressed lies in ensuring the effective enjoyment of their right to constitute an organization in accordance with participation in constitutional democracy, which, of course, the Constitution has granted since its Preamble so that its citizens can exercise their democratic and representative rights. In

this regard, consumer organizations are of vital importance in defining consumer policies. Thus, the Constitutional Court declared the enforceability of the articles in question.

Judgment C-830 of 2010. In this judgment, the plaintiff argued that Articles 14, 15, 16 and 17 of Law 1335 of 2009 contravene Articles 333 and 334, the superior norm referring to free private initiative and freedom of enterprise.

With regard to the charges made by the plaintiff, it is argued that the limitations on the promotion of tobacco, which are based on international regulations, must be compatible with constitutional freedoms, especially that of the higher standards allegedly violated. Regarding tobacco advertising and consumer rights, the Corporation related that advertising is a mechanism by which companies transmit persuasive messages for the inclination of consumers to a certain good or service by highlighting the virtues of the product offered. In this order of ideas, we would be in a liberal legal scenario of the market with reduced state intervention by adopting a model of social market economy since the Political Constitution of Colombia of 1991, in relation to its article 78 linked to the rights of consumers. In conclusion, the articles in question are compatible with the constitutional mandates of freedom of enterprise and free private initiative, since the rights of the consumer are not affected in the understanding that the consumer is aware of the effects and consequences of the consumption of such goods. Thus, the rule was declared enforceable.

Judgment C-432 of 2010. In the exercise of the public action of unconstitutionality as a political right enshrined in Article 40, numeral 6 of the Constitution, the citizen Rodrigo Junguito Bonnet sued Article 86 of Law 1328 of 2009 on the grounds that it violates Articles 13, 19, 42, 78, 83, 158 and 333 above, considering that the challenged rule is unconstitutional in the understanding that it prevents users from freely choosing between alternative services and imposes burdensome prohibitions and burdens on users that are manifestly unreasonable and disproportionate. In addition, he mentioned that the rule excludes a competitor from a market by imposing such burdens, unbalancing the equality of regulatory conditions.

In short, and in relation to freedom of enterprise, the Corporation pointed out that it is the responsibility of the State by constitutional mandate to ensure the exercise of free competition between various entrepreneurs engaged in the same economic activity. The State, by ensuring free competition: (i) guarantees a greater supply and quality of goods and services available to consumers; (ii) it prevents the creation of monopolies; (iii) allows for the reduction of product prices; (iv) ensures technological innovation; (v) leads to better use of existing resources; (vi) avoids an excessive concentration of wealth; and (vii) it leads to greater well-being of society and individuals. Finally, the Corporation mentioned that one of the essential components of consumer rights is the protection of the freedom to choose the different goods or services offered in the market. In conclusion, (i) consumer rights are multifaceted in nature; (ii) it is necessary for the State to regulate economic freedom in the interests of the protection of consumer rights; and (iii) the consumer is in an unfavourable position vis-à-vis the supplier of the product. Article 86 of Law 1328 of 2009 was declared enforceable.

Judgment C-592 of 2012. In the present judicial order, the Constitutional Court, exercising the concrete and abstract review of constitutionality, reviewed the enforceability of Article 30 of the Consumer Statute by considering the media that disseminates misleading advertising jointly and severally liable, in the event of proving serious fault or malice, because it violates Articles 3, 6, 20 and 78 of the Political Constitution.

With regard to consumer rights, the plaintiff argued that the rule violates the constitutional articles on these rights because the responsibility should fall solely on the producer or the person who provides the service, and the fact of extending that responsibility to the media would constitute a burden on that production.

commercialization because that information comes from the producer, but not from the media. In this vein, the Court analyzed the charges, and in its rigorous and judicious study, analyzed the regulation exercised by the legislator with respect to advertising and consumer rights. In addition, the asymmetrical relationship between market actors was analyzed, considering the consumer as the weak party, whose protection is the task of the State through rules of intervention in the economic circuit. That is why the regulation privileges the right of consumers to obtain complete, truthful, accurate and suitable information on the products that are offered for subsequent purchase. In this sense, in a possible scenario of liability, it would be unfair to the consumer to impose the burden of establishing who caused the damage within the economic chain – supplier, producer, media, vendor.

Finally, the Corporation carried out a proportionality test where it was established that: i) the measure pursues a purpose that is not prohibited in the constitutional order, which is the protection of the consumer against misleading advertising; (ii) the measure is appropriate to meet the purpose proposed, which is the joint and several social responsibility of the media in order to protect the consumer; and (iii) there is proportionality, i.e., the measure is necessary or proportionate because it is clear that the media need to be involved in the safeguarding of consumer rights, taking into account their power to disseminate and, eventually, to convince the purchaser of the good or service offered. In conclusion, the Court considered that the media must indeed respond jointly and severally in the event of a possible scenario of liability for causing damage to the consumer by the product or service offered by the consumer, in order to establish compensation for the damage caused by its negligent action, in addition, the State can impose such a measure because it is the guarantor of the protection of the rights of consumers and users. In this vein, the Court declared the enforceability of the challenged rule.

Judgment C-909 of 2012. The plaintiffs filed a claim of unconstitutionality against Articles 2, 11 and 12 of Law 1308 of 2009 for violating Articles 113, 150, 151, 152 and 333 of the Political Charter due to the fact that the definition of "abusive clauses" in adhesion contracts is not specified, but rather the legislator took care to state what these clauses are. In addition to certain charges against the action of the legislator in regulating through regulations on financial, insurance, and stock market matters, among others.

In this vein, the Corporation, in order to declare the enforceability or otherwise of the regulation, made a judicious account and study on the protection of the consumer of goods and services and the financial user. Thus, the Constitutional Court pointed out that, while it is true, the State respects, supports and guarantees economic freedom – as a right that does not enjoy a fundamental and obligatory nature; This freedom has certain limitations since it must prevail and respect the common good and the general interest. In addition, it is the duty of the constitutional judge to apply a weak proportionality test to determine whether or not the legislator's measure is in accordance with the law. In addition, it stated that the legislator does not enjoy absolute freedom to regulate on the subject, since it must take into account the real asymmetry of market agents in the understanding that the supplier is in a dominant position by having expertise and knowledge about the product and the process of its creation and marketing; This is different from the position in which the consumer finds himself, because he does not have the same expertise and can only make decisions according to the information provided by the producer. In this understanding, the consumer has to rely in a certain way on the information provided by the producer, without taking into account that the latter could omit to warn of certain harmful and detrimental effects for the consumer when purchasing or consuming the product offered.

Therefore, consumers, being on an unequal footing with producers, suppliers and/or vendors, base their relationships on trust and good faith, and make their decisions based on the success of a product, the novelty of the good, a certain brand, etc. Thus, the closing

body alluded that one of the nuances of consumer law lies in granting mechanisms in which consumers can ensure their rights through organizations that represent them in their internal procedures. In addition, he recalled that indeed, the constitutional mandate is clear in the protection of the rights of consumers from its Preamble, where it ensures spaces for citizens to influence the formulation of public policies that concern them. The Court finally decided to declare the enforceability of the challenged rule.

Judgment T-987 of 2012. The present ruling, which is subject to review by the Constitutional Court in the exercise of the diffuse and specific review of constitutionality, studied the rulings issued in the first and second instance of a tutela brought against Aerovías del Continente Americano S.A. — Avianca S.A.

Mr. Gustavo Quintero Navas, the plaintiff, reported that the user frequently uses the air transport services provided by Avianca S.A. Thus, as a result of the missed flight, there was an altercation between the plaintiff and the employees of the defendant company, for which Avianca S.A. decided to include him in the list of non-compliant travelers, for which the company decided not to provide its services for a period of one year. Thus, the plaintiff mentions that this decision violates different constitutional rights, such as the right to due process, privacy, good name, habeas data, equality, consumer rights, free development of personality and work.

In the first instance, the Seventeenth Municipal Court of Bogotá declared the inadmissibility of the tutela action, considering that the decision of Avianca S.A. was in accordance with the law and did not violate the fundamental rights invoked. Subsequently, the citizen challenged the decision of the a quo arguing that the judicial order disregarded the principle of congruence, as it did not take into account the grounds outlined in the writ of protection by the plaintiff, since the company provides a public service and must adhere to the administrative procedure. In the second instance, the Eleventh Criminal Judge of the Specialized Circuit of Bogotá partially revoked the sentence in the sense that it did not declare it inadmissible, but denied the protection of the rights invoked. In addition, it pointed out that the inclusion of the user in the list of non-compliant travelers was correct on the part of the defendant. Similarly, it indicated that it agreed with the plaintiff in the arguments of the challenge when it referred to the inconsistency of the decision of the a quo, and therefore modified the operative part.

In the review process carried out by the Court in the exercise of its functions enshrined in Decree-Law 2591 of 1991, it studied the rights of the consumer vis-à-vis public services, thus, the Corporation related that in accordance with Article 4 of Law 472 of 1998, there was a concern for the rights of consumers, For this reason, they were set out in the above-mentioned articles. In this sense, and in accordance with Article 78 above, the Law will regulate the quality control of the goods and services offered, in addition to all those producers and service providers will be responsible, and finally, the State will be the guarantor of the participation of user organizations and consumers in the study of the provisions that involve them. In addition, the Court reviewed the rules enshrined in Law 1480 of 2011 (Consumer Statute), where this scenario of inequality is presumed.

To conclude, it is evident that there are extensive provisions in the legal system for the protection of the interests of the consumer, who is effectively on an unequal footing with producers and suppliers, so that the State must intervene in one way or another to defend this market agent in a special way. even when it comes to public services, in terms of their provision, equitable access, relationship of dependence on their services and material satisfaction of fundamental rights. In this understanding, the Constitutional Court revoked the rulings of the first and second instances, and instead, protected the fundamental rights violated by Avianca S.A., for which it ordered the defendant to eliminate the database called the list of non-compliant travelers.

Judgment C-133 of 2014. In the present judicial order, the unconstitutionality of the entirety of Article 25 of Law 1558 of 2012 was claimed because the plaintiff argued that

the challenged regulation was issued without the participation of consumer and user organizations in its study having been guaranteed, which violates Article 78 above. in connection with Articles 1 and 2 of the Magna Carta.

In reaching a decision on the merits, the Constitutional Court considered: (i) consumer rights as collective rights; (ii) the multifaceted nature of consumer rights (reiterated case-law); and (iii) the constitutional parameters of constitutional review. In the first place, the Corporation stated that the validity by which the status of collective rights is granted to consumer rights is found in Article 1 of the Political Constitution, because this right is substantially related to the protection of the citizen in general, this being an essential purpose of the social rule of law. Then, he recalled that the Political Constitution of Colombia of 1991, elevated the rights of consumers to constitutional rank, which can be evidenced in Article 78 above, however, the Constituent Assembly considered it necessary that, in addition to raising those rights to that rank, consumers and users should also be granted tools and mechanisms through which they could participate in the decisions that involved them. in addition to demanding their rights.

Finally, he explained that Article 78 of the Constitution includes the participation of the consumer in the decisions that are within the competence of the consumer, in legislative procedures with a view to requiring the holding of specific hearings in which consumer and user organizations are heard, or failing that, to provide for the request for reports and studies. to enlighten the speakers on the effects of regulation. In this vein, the Constitutional Court declared the rule enforceable.

Judgment C-583 of 2015. In the study of this judicial order, the alleged unconstitutionality of Article 24 of Law 1480 of 2011 —Consumer Statute—, was analyzed, where the plaintiff assured that it violates Articles 16, 20 and 78 above on the understanding that the regulation omits to include within the minimum information required of producers and suppliers if it is a genetically modified food or product. whether it is a GMO product or not.

In order to reach a decision on the merits, the Corporation studied: (i) the particularities of constitutional consumer protection in Colombia; and (ii) consumers' right to information. In the first place, the Constitutional Court pointed out that the State is responsible for regulating economic activities by establishing limits or restrictions with a view to protecting, among other collective rights and interests, those of the consumer. It should be noted that this restriction cannot be made by the State by interfering directly in the internal sphere of the company, but by protecting the social interests of the workers, the collective needs of the market, the rights of consumers and users, among others; This is in order to preserve constitutional mandates, which are equally valuable. Then, based on the limitations that the State can make in the face of freedom of enterprise, the Constituent Assembly considered it necessary to provide particular protection of consumer rights in order to articulate a balance between this real asymmetry between consumer and producer/supplier/vendor.

On the other hand, he related the right to information as consumer rights that according to Judgment T-145 of 2004, all information must be accurate and sufficient. In conclusion, as has been reiterated throughout the development of this textual production, after an analysis of various jurisprudence, the Colombian State is responsible for limiting economic freedom in order to protect collective rights and interests based on the general interest, so that both constitutional postulates are guaranteed. In addition, one of the various requirements that suppliers, distributors and/or producers must comply with is to provide ample and sufficient information to their consumers as taxpayers of the relationship that arises in the market. Thus, the Constitutional Court issued a sentence deferred in time on the understanding that the norm will be enforceable for a term of two years, while the legislator regulates the matter, if after the term granted by the

Constitutional Court no legislation has been passed on the subject, the norm becomes unenforceable.

Judgment T-240 of 2016. In the present judicial order, which is being reviewed by the Constitutional Court, it was sought to determine whether the defendant entities – Liberty Seguros S.A. and Colpatría Multibanca – Cali Branch – violated the fundamental rights of the plaintiffs – Hamid Aljure Gaviria and Brayan Alexander Yusti Mellizo, respectively – to health, life, education, decent housing, due process, equality, and dignified life. minimum subsistence and petition, by denying the execution of life insurance policies acquired under the argument of alleged reluctance and pre-existence.

The following is a list of the background to the accumulated files:

File: Hamid Aljure Gaviria vs. Liberty Seguros S.A. The plaintiff acquired a life insurance policy with the company Liberty Seguros S.A., at the age of fifty-two. This policy covered: (i) death from any cause; (ii) total and permanent disability from any cause; (iii) accidental death; and (iv) serious illness. Four years later, the plaintiff suffered a severe bite to the head, for which he was operated on for a stroke, which left him with certain sequelae that reduced his ability to work by 53.11%. As a result of the above, the plaintiff requested compensation for 50% of the value of the insurance, which was denied on the grounds that the plaintiff suffered from hypertension at the time the contract was concluded. In the first instance, the Tenth Municipal Civil Court of Neiva declared the tutela action inadmissible, arguing that there is no irremediable damage. In the second instance, the Third Civil Court of the Circuit of Neiva confirmed the judgment of the a quo.

File: Brayan Alexander Yusti Mellizo vs. Colpatría Multibanca – Cali Section. The plaintiff acquired a loan with the defendant, of which he additionally filled out an individual inclusion form of the debtor group life insurance policy, issued with the application to the approved consumer credit. He indicated that before signing the insurance contract, he was undergoing chemotherapy treatment for testicular cancer, a condition that could have been noticed by the official at the time of signing the contract. After the contract was signed, the medical board declared him to be totally and permanently disabled, which is why it asked the defendant to execute the insurance policy purchased. The defendant responded negatively to his request, arguing reluctance at the time of declaring his state of risk. In the sole instance, the Tenth Municipal Civil Court of Santiago de Cali declared the tutela action inadmissible because it did not comply with the requirement of subsidiarity.

Review Venue. In order to reach a decision on the merits of the cases referred to above, the Constitutional Court studied the abusive clauses in insurance contracts and the constitutional approach, the reticence or accuracy and the duty of solidarity of insurance companies against persons in a state of manifest weakness. In the first place, in the face of abusive clauses in insurance contracts and constitutional approach, the Court related that the insurer is in a dominant position vis-à-vis the policyholder by setting the conditions under which it would be willing to make the payment, thus, the policyholder does not have the opportunity to deliberate the conditions of the clauses of the contract. In this vein, insurers could take advantage of this dominant position and abuse the contract, without being able to offer alternatives or more convenient modifications to payment. It also cited Articles 11 and 12 of Law 1328 of 2009.

On the other hand, the Corporation stated that as long as there are ambiguous and vague clauses, dictated by one of the parties, it will be interpreted against it. That is why in the clauses of the insurers these clauses will be interpreted against them, due to their dominant position in the contractual relationship. Finally, based on Judgment T-328A of 2012, it established that the clauses of the contract must be applied taking into account the nuances of each specific case, in this order of ideas, the factual elements must be analyzed to make a regulatory adaptation accommodated to the constitutional mandates.

Thus, it was also established that in life insurance contracts, where taking out the policy becomes a state of manifest weakness, there is a constitutional duty of solidarity that constrains insurance companies to reevaluate the conditions of collection and adapt them to the fundamental principles of the Political Charter. In conclusion, it is necessary that: i) insurance companies formulate clauses that are not abusive or ambiguous in accordance with the legislative power to regulate consumer rights, which is reflected in articles 11 and 12 of Law 1328 of 2008, in order to protect consumer rights and the general interest; and ii) to evaluate the conditions of the policyholders by applying a differential approach due to a state of manifest weakness using the principle of solidarity by which the Colombian State is founded. Finally, the closing body of the constitutional jurisdiction protected the rights of both plaintiffs.

Judgment T-227 of 2016. In the present judicial order, the rulings of tutela instituted by Mrs. Juanita Concepción Torres, acting as an unofficial agent of her mother, Teresita de Jesús Bermeo de Torres, seventy years old, against Compañía Mundial de Seguros S.A. and the Centro de Servicios Crediticios, CSC, were studied, which in its writ of tutela mentioned that her fundamental rights to a dignified life and the minimum subsistence were violated.

The unofficial agent said that her mother had acquired a credit obligation with CSC, which was protected by the insurance company Seguros Mundial S.A. in order to protect death, total and permanent disability and serious illnesses. Two years and three months after the entity disbursed the money, Mrs. Teresita de Jesús suffered a stroke, with which she lost 89.16% of her ability to work. Thus, they requested the disbursement of the insurance to forgive the debt. The lender denied the debtor's request, arguing that she did not meet the age requirements, since the protection is granted to people under sixty-five years of age. The unofficial agent alleged that the lender deceived her mother because they failed to mention that detail to her at the time of taking out the insurance.

In the first instance, the Second Municipal Criminal Court of San Juan de Pasto decided not to protect the rights invoked by the plaintiff on the grounds that subsidiarity was inadmissible and the existence of irremediable damage was not demonstrated. The unofficial agent challenged the decision, arguing that the decision did not take into account the plaintiff's precarious situation. In the second instance, the Third Criminal Court of the Pasto Circuit confirmed the decision of the a quo.

In order to determine whether it is possible to demand compliance with an obligation contained in an insurance policy and the extinguishment of the debt by a person who has lost 89% of his or her working capacity, the Constitutional Court, as far as consumer rights are concerned, studied the right to effective access. timely and clear information in insurance contracts and the principle of good faith in these contracts with a view to granting or not granting protection to the plaintiff. Thus, the Corporation explained that the Colombian legal system obliges financial institutions to provide information to consumers about the products and services they offer, so that these consumers will be able to make a decision regarding what is offered, taking into account their needs and interests. In this order of ideas, this obligation of the entities has no other purpose than to close the gap of inequality between the policyholder and the insurance company, in order to balance this situation of defenselessness when the latter adhere to a life insurance contract. Likewise, he recalled that contracts may contain ambiguous or vague clauses, which in accordance with Article 1624 of the Civil Code and in exercise of the pro consumatore principle – consumer-friendly interpretation – the clauses will be interpreted against the person who was obliged to give an explanation and omitted to do so. In this understanding, if the insurance company failed to provide all the information regarding the clauses, it will be interpreted against it. Finally, the Corporation revoked the rulings that were the subject of review and protected the rights to the minimum subsistence of Mrs. Teresita de Jesús Bermeo.

Judgment T-591 of 2017. The Constitutional Court, in the exercise of the diffuse and specific review of constitutionality, reviewed the present judicial order in which the plaintiffs with accumulated files considered that their fundamental rights to the minimum subsistence, human dignity and due process had been violated as a result of the actions carried out by Aseguradora Solidaria de Colombia Ltda, Seguros Generales Suramericana S.A. —Sura—, BBVA Seguros y Equidad Seguros O.C., by denying them (i) to enforce the life insurance policy after the death of the policyholder; (ii) to enforce the insurance policy after loss of working capacity of 75.28 per cent; (iii) to enforce the insurance policy after loss of work capacity of 89.9 per cent; and iv) make the insurance policy effective if the age limit is exceeded and the loss that arises is not part of the coverage of the policy.

In order to adopt a decision on the merits, the Corporation studied, in the first instance, the procedural requirements of the tutela action, among them, the requirement of subsidiarity in the face of the protection of consumer rights, to which it pointed out that with regard to the appropriate ordinary remedies, it should be noted that in the face of the non-conformity generated by an insurance contract, the financial consumer may file a complaint with the Financial Superintendence or through a consumer protection action.

As a general rule, when there are other ordinary mechanisms to claim the rights invoked, the tutela action is inadmissible, however, when the protection of fundamental rights is requested by means of the tutela action due to violation or threat thereof, the constitutional judge must evaluate the suitability and effectiveness of such ordinary mechanisms in order to prevent irremediable damage from being consummated. In addition to the fact that such action effectively protects the rights alleged. Thus, analysing the ordinary mechanisms, it can be inferred that due to the fact that these mechanisms are not definitive, nor do they have a peremptory term and because they do not enjoy suitability to resolve conflicts of this nature, the tutela action is appropriate in an exceptional manner, dispensing with the ordinary mechanism, since it is an insurance contract entered into between persons with asymmetrical positions. which configures a state of helplessness.

Judgment T-145 of 2019. In this judgment, the rulings of tutela issued by the Fifteenth Administrative Court of the Judicial Circuit of Bogotá and the Administrative Court of Cundinamarca were reviewed, where the plaintiff – Corporación Colombiana de Padres y Madres – RED PAPAZ – considered that the defendant entity – Caracol Televisión S.A. and RCN Televisión S.A., members of the Consortium of Private National Channels – CCNP – violated her fundamental constitutional rights to information. freedom of expression and equality, in the broadcasting of advertising messages whose purpose is to affect the consumption decisions of individuals, especially minors as subjects of special constitutional protection.

The defendant said that at a meeting of the network it received a petition with the support of 36,000 people who expressed the need to control the veracity of the information that was available in the advertising, presentation and labels of ultra-processed products aimed at the child and adolescent population. Thus, it asked the Consortium of National and Private Channels (CCNP) to broadcast the informative message that they made "don't eat any more lies" in the television programs concessioned by the State to Caracol Televisión S.A. and RCN Televisión S.A. However, the consortium warned that it would not issue the code until the contents were seen and evaluated by the corresponding team; that is to say, it made the transmission of the informative message subject to prior control of its content. After its evaluation, the CCNP indicated that the video did not meet the required technical characteristics, after its corrections, the legal representatives of the defendant indicated that they could not advertise because the message was controversial. In order to provide a substantive solution to the specific case, the closing body of the constitutional jurisdiction studied the essential core of consumers' right to information. Thus, it can be concluded that it is the duty of the media to publicize different campaigns

for the sake of protecting consumer rights, even more so, when it comes to the rights of children as subjects of special constitutional protection. Therefore, the Constitutional Court upheld the rights of the defendant.

Judgment C-208 of 2020 – Legislative Decree. In this judicial order, the Constitutional Court, in the exercise of its function of concentrated, abstract and automatic control of constitutionality, reviewed the constitutionality to declare the enforceability or not of Legislative Decree 557 of 2020, in development of the state of emergency declared by Decree 417 of 2020.

In relation to the rights of the consumer against the reimbursement of consumer travel packages in light of the pandemic, the Court recalled that the rights of consumers have constitutional and multifaceted character in accordance with Article 78 of the Charter, additionally, it pointed out that the fact that in the current Constitution the rights of the consumer have been elevated to constitutional rank, As a result, it has a different type of liability in the legal framework than traditional civil liability. In conclusion, it is necessary to take into account the nature of consumer rights when they are elevated to constitutional rank with the Political Constitution of 1991, as well as it is necessary not to lose sight of the fact that the State must intervene in the economic freedom enjoyed by companies indirectly so that they do not violate other constitutional mandates. without restricting their economic activity, moreover, the latter should be interpreted as an activity to satisfy the needs of the collective, rather than for profit. Legislative Decree 557 of 2020 was declared enforceable.

Judgment T-302 of 2020. In the present tutela judgment, the Constitutional Court reviewed the rulings issued by the First Municipal Criminal Court for Adolescents with the Function of Control of Guarantees of Pereira and the Second Criminal Court of the Circuit of Adolescents with Cognizance Functions, in which a tutela action filed by María Eugenia Macías Rivera as an unofficial agent of María Elena Rivera de Macías against the Bank of Bogotá was decided.

In the facts related to the writ of protection, the unofficial agent reported that Mrs. María Elena Rivera contracted two credit obligations with the defendant. Subsequently, he suffered a stroke and was left in a vegetative state. Thus, the unofficial agent filed a petition in which she reported the condition of her mother, attaching her medical history, which prevented her physically and mentally from making the payments of the loans acquired, consequently, she requested the payment of the insured value in the policies subscribed by the plaintiff with the credit institution to make effective the payment of the obligations acquired. The lender failed to respond to the petitions made by the plaintiff's daughter. Subsequently, Mrs. María Eugenia Macías Rivera filed an action for protection as her mother's unofficial agent.

In the first instance, the First Municipal Criminal Court for Adolescents with the Function of Control of Guarantees of Pereira declared the inadmissibility of the tutela action because there are other ordinary defense mechanisms, since there is no evidence of violation of the debtor's right to the minimum subsistence. The plaintiff challenged the decision, explaining that Mrs. María Elena Rivera de Macías was in a situation of permanent physical disability and her economic condition is precarious, which shows imminent damage. In the second instance, the Second Criminal Court of the Circuit of Adolescents with Cognizance Functions confirmed the ruling issued by the a quo. In the review proceedings, in order to adopt a decision on the merits, the Review Chamber reiterated jurisprudence regarding the duty of information of financial institutions and insurance companies in insurance contracts and the omission of information to the plaintiff.

It is necessary that the above is carried out in the contractual relations of insurance companies and policyholders, since this guarantees balance within a gap of inequality between the active and passive subject of this contractual relationship, since this allows

policyholders to know their duties and exercise their rights in a timely manner. as well as making sound and informed decisions regarding the different financial products that are offered and acquired. In relation to the above and to the specific case, the omission to provide this information to the plaintiff constitutes a scenario that violates the constitutional limits of the common good, social solidarity and the prevalence of the general interest. That being the case, the State – as in the present case – must intervene in order to correct the action and restore the balance between the parties to the contractual relationship. Finally, the Constitutional Court upheld the plaintiff's fundamental rights to information and due process of law.

CONCLUSIONS

Consumption, as a phase of the production process, contributes to the growth of economic activity, as it is one of the components of the gross domestic product. In this context, the consumer is the individual and collective protagonist of the act of consumption. However, the consumer is the weaker party in the consumer relationship. For this reason, there are consumer rights, for which the State must make them enforceable and effective. Consumer law has two axes on which the tools of protection extend: individual protection and collective protection. Product liability and consumer protection actions are individual and protect personal rights. Consumer rights as collective rights can be violated by action or omission of public authorities and individuals, which is why consumers make use of the mechanisms established for their effective protection, including the contentious-administrative procedure and popular, group and tutela actions. However, the constitutional categorization of consumer rights as collective rights and the established judicial action mechanisms are not effective, which is why it is proposed that consumer rights should be framed within the fundamental social rights with individual ownership, since it is based on an economic concept of a person who acts to satisfy his or her own needs.

From the jurisprudential analysis, the solid and concise line regarding consumer rights stands out, where the Constitutional Court, in general terms, has not changed its position, but, on the contrary, has made significant contributions that are considered as an advance with respect to the aforementioned rights. In this regard, in 1995 the Court ruled on the matter, evidencing progress in what could now be called a "conceptual approach" with respect to consumer rights. In that ruling, the Corporation weighed the consumer's right against the information provided by the producer in order to make decisions in the acquisition of substances that are harmful or harmful to their health. In this vein, on the one hand, freedom of enterprise is guaranteed and, on the other, that the consumer has access to information on the products he or she is going to purchase, and thus none of the previous constitutional mandates (Articles 78 and 333 above) are violated.

Then, in the year 2000, the closing court ruled that consumer rights were multifaceted, as follows: (i) substantially: it incorporated claims, interests and situations that are based on its subject-matter; that is, in the quality of goods and services offered, information about them, etc.; (ii) procedurally: regarding the enforceability of the minimum guarantees of the product, compensation for damages caused by the service or product by means of class action, etc.; and (iii) participatively: in relation to the administration of justice and regulatory bodies. A decade later, the Corporation related the real asymmetry in which the consumer finds himself vis-à-vis the producer, dispenser and/or supplier. In this understanding, the latter present a more favorable position vis-à-vis consumers, since they have economic strength, expertise and could eventually provide the information they want regarding their products, omitting necessary and vital data when making decisions regarding the purchase of products by the consumer.

In this vein, a reiterated assessment throughout the jurisprudential analysis is the fact that the State must be the guarantor of all constitutional mandates, that is, it must regulate

economic freedom without this meaning that it directly interferes with the activities carried out by the company, without them having free rein. This would set up scenarios of violation of constitutional rights, as previously analyzed. Thus, the State has the capacity to intervene in the area of the protection of consumer rights, which ensures the rights of the taxable persons of the contractual relationship of the market, such as the freedom of enterprise enjoyed by all producers. Additionally, in 2015, the Constitutional Court ruled on the right of consumers to obtain information about the food they consume in terms of whether or not they are genetically modified or if they are transgenic products. In this order of ideas and in a general way, the Corporation considered that consumers do indeed have the right to access the information necessary for the making of enlightened consumption decisions, which must be true, sufficient, clear and timely, which allows them to know their rights and obligations with respect to the contractual relationship between market agents. in accordance with the social function, solidarity and good faith as mandates for optimization that build the social rule of law.

Likewise, it concluded that consumer rights are (i) a set of rules aimed at correcting the asymmetries evidenced in the market and derived, among other circumstances, from differences in economic capacity and the possession of information of consumers. These rights are of a dynamic nature, conditional on variations in the situation of the consumer and producer in the changing market scenario, (ii) which also require the legislator to interpret legislation that always takes into account the particular situation of consumers in the market for the circulation of goods and services, and (iii) that the principle of consumer protection entails limits to the free regulatory capacity of the legislator, who cannot arbitrarily refrain from regulating matters within his competence or not fixing the risks and burdens between the injured party and the producer, in disregard of the statements and objectives of the Constituent Assembly, because it is the latter that is responsible for establishing the corresponding guarantees of consumer protection and liability, in accordance with the constitutional mandate.

Finally, it ruled on the admissibility of the tutela action in an exceptional manner, since there are other ordinary mechanisms for the protection of consumer rights enshrined in the Consumer Statute (Law 1480 of 2011), inclusive. The Court's ruling was that when the protection of fundamental rights is also requested through the tutela action due to their violation or threat, the constitutional judge must evaluate the suitability and effectiveness of the ordinary mechanisms existing in the special consumer rule in order to prevent irremediable damage from being generated. in addition to the comprehensive protection of the rights alleged. In this understanding, although it is true that there is an ordinary mechanism for the protection of consumer rights, which would not comply with the subsidiarity filter of the mechanism enshrined in Article 86 above, this mechanism is not suitable for resolving conflicts of this nature, because, when a contract is concluded between persons with asymmetrical positions, It sets up a state of helplessness.

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