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A (TRAGIC) LEGAL CONSEQUENCE OF COVID 19: MISTAKEN INTERPRETATION OF LAW NO. 14,034 OF AUGUST 5, 2020 AND THE ATTEMPT TO APPLY IT TO COMPLETE LEGAL ACTS

UMA (TRÁGICA) CONSEQUÊNCIA JURÍDICA DA COVID 19: A INTERPRETAÇÃO EQUIVOCADA DA LEI Nº 14.034 DE 5 DE AGOSTO DE 2020 E A TENTATIVA DE APLICÁ-LA A ATOS JURÍDICOS PERFEITOS

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ABSTRACT

Objectives: To analyse e Law No. 14,034/2020, which provides for emergency measures for Brazilian civil aviation due to the Covid-19 pandemic, and which was misinterpreted and affected complete legal acts, requiring judicial intervention to make it absolutely clear that the legislative innovation cannot reach such acts.

Methodology: The methodology of the paper adopts a legal-dogmatic approach that contemplates the law with epistemological self-sufficiency and works with elements that are internal to the legal system. This approach examines the notions of efficiency and efficacy of legal norms and requires extrapolation of the analysis of the normative discourse beyond the limits of the legal system.

Results: To reiterate that the Federal Constitution of 1988 expressly recognized, in Article 5, paragraph XXXVI, legal certainty as one of the guarantees of the citizen. That provision refers to the acquired right, the complete legal act and the res judicata, as clauses that restrict the legislative activity that may introduce changes to the infra-constitutional legal system.

Contributions: The paper validates the guarantee of the complete legal act, considering that the purchase of airline tickets is made, almost entirely, by the digital means available. It demonstrates that the intention of the suppliers of these services, who tried to fulfil the cancellations that had been concluded even before Provisional Measure 925, causes unacceptable legal uncertainty for consumers.

Keywords: Information Society. Covid-19. Law 14.038/2020. Non-retroactivity of the Law. Complete Legal Act.

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RESUMO

Objetivos: *Analisar a Lei nº 14.034/2020, que dispõe sobre medidas emergenciais para a aviação civil brasileira em razão da pandemia da Covid-19, que foi interpretada equivocadamente e atingiu atos jurídicos perfeitos, determinando a intervenção judicial para deixar absolutamente claro que a inovação legislativa não pode alcançá-los.*

Metodologia: *A metodologia do artigo adota a linha jurídico-dogmática que considera o direito com autossuficiência epistemológica e trabalha com os elementos internos ao ordenamento jurídico. Essa abordagem examina as noções de eficiência e eficácia das normas jurídicas e exige a extrapolação da análise do discurso normativo para além dos limites do ordenamento.*

Resultados: *Reiterar que a Constituição Federal de 1988 reconheceu expressamente, em seu art. 5º, inciso XXXVI, a segurança jurídica como uma das garantias do cidadão. O referido dispositivo faz menção ao direito adquirido, ao ato jurídico perfeito e à coisa julgada, como cláusulas que restringem a atividade legislativa que venha a inovar o ordenamento jurídico infraconstitucional.*

Contribuições*: O artigo ratifica a garantia do ato jurídico perfeito, considerando que a aquisição de bilhetes aéreos se faz, quase que integralmente, pelos meios digitais disponíveis. Demonstra que a pretensão dos fornecedores desses serviços, que tentaram alcançar os cancelamentos já concluídos antes mesmo da Medida Provisória 925, provoca inaceitável insegurança jurídica aos consumidores.*

Palavras-Chave: *Sociedade da Informação; Covid 19; Lei 14.038/2020; Irretroatividade de Lei; Ato Jurídico Perfeito.*

1 INTRODUCTION

Law No. 14,034/2020 provides for emergency measures for Brazilian civil aviation due to the Covid-19 pandemic. It is not difficult to imagine that this business sector has indeed suffered considerable financial impacts with the closure of borders and the various models of *lockdown* that have been in place in the Brazilian federated entities. These measures brought about numerous flight cancellations, with the consequent legal obligation to reimburse consumers for the contracted services that, ultimately, were not provided.

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Before we proceed, we would like to note that impacts of greater significance, such as those reported by Vigliar and Waldman (2020, p. 297), did not, unfortunately, warrant the same attention. Effectively, Covid-19 caused more significant impacts on society, since, as pointed out by the aforementioned authors, based on the legal categories recognized by the Brazilian Inclusion Law (Law No. 13,146, of July 6, 2015), the pandemic created, due to governments' negligence, a barrier (barriers, for that law, constitute discriminatory attitudes) that separated students with access to technologies that facilitate remote, synchronous and/or recorded teaching, from those who, with a lack of basic digital structure, such as access to wi-fi, were left on the margins of digital distance education and who now continue, in 2021, with the worsening pandemic and a renewed cancellation of face-to-face classes, without the possibility of receiving formal school education to ensure the minimum conditions of pedagogical adequacy.

Let us agree, in fact, that there are few sectors of society that have not been impacted by the pandemic and, as well as those sectors, individuals who, similarly, have experienced situations ranging from the temporary suspension of their employment contracts to the end of such contracts, the resulting decrease or loss of their income which was met, at least in the Brazilian reality, by haphazard and meager financial aid.

Returning to Law No. 14,034/2020 and its practical consequences, it is possible to claim that its objective was to enable airlines to reimburse the value of tickets purchased by consumers only (12) twelve months after the date of the cancelled flight, that is, in spite of the flights not running, the amounts spent by consumers would finance the air sector crisis derived from Covid-19 which, without interest charges, would be reimbursed only after the period established in the law in question.

We are interested, as the title of this paper indicates, in analyzing a practice, derived from misinterpretation, which promoted the retroaction of the law to achieve reimbursements that had already been incurred prior to the provisional measure - which will be referred to shortly - disregarding the legal certainty clause of the complete legal act that protects consumers for their services.

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Clearly, it is known that the emergence of new situations - and the pandemic caused by SARS-Cov2 was particularly unsparing in the creation of such situations - may require the issuance of legislative acts that are designed to regulate the new and consequent legal relationships that have now arisen.

França (1969, p. 3) teaches that, if the true source of a legal right is human agency and the law is one of its forms of expression, it can be said that the exercise of that agency was necessary, in the view of the Federal Executive (from the outset, by the issuance of Provisional Measure 925, referred to below) and by the National Congress, to regulate the form of reimbursement of the value of tickets bought by consumers in the face of the pandemic.

It will never be irrelevant to recall that Article 1 of the Federal Constitution of 1988 reaffirms that Brazil is constituted (this is the verb used) in a democratic state of law and, therefore, rights and duties must find their foundations in the law, before which all are equal.

The innovation of the Legal System, through the use of one of its appropriate instruments, relies, in the infra-constitutional plan, on the highly important discipline of Decree-Law no. 4,657, of September 4, 1942, which is the Introductory Law on the norms of Brazilian Law (as amended by Law No. 12,376, of December 30, 2010).

As stated by Diniz (1994, p. 4), it is a *law of laws*:

> […] a set of norms about norms, constituting a right over a right ("*ein Recht der Rechtsordenung*", "*Recht ueber Recht*", "*surdroit*", "*jus supra jura*"), a "superright", a coordinating right of rights. (DINIZ, 1994, p. 4)

This *law of making laws*, in a very clear and safe way, regulates, among other regulations, how to resolve conflicts between the text of a new law and pre-established legal situations in the light of the legislation it repeals, taking into account the need to observe the clauses of legal certainty (referred to below) that are guaranteed to citizens in paragraph XXXVI, of Article 5 of the same Federal Constitution.

Legislative innovation is necessary and inherent to the Rule of Law. The warning given by Ihering (1983, p. 23), in a speech almost 150 years ago, in 1872, to

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the Vienna Legal Society, which compares a potential aspiration to the eternity of a law[1] to a threatening affront, taking into account that legislative instruments are products of an ever-changing social environment reality requires, at the same time, to consider the effects of this innovation.

Law No. 14,034/2020 evidently encountered consolidated legal situations, stabilized by the legal certainty clause that activated complete legal acts carried out prior to its effectiveness.

Regrettably, unacceptable interpretations emerged of the legal text provisions sought to be achieved, as illustrated by some examples of judgments that will be analysed below.

Consumers who had already been reimbursed were forced, in 2020, amid all the challenges created by the required social isolation, to resort to the Judiciary, as they were taken aback by unusual situations such as, by way of example, the improper collection of charges for airline tickets that had already been reimbursed, delivered even before Provisional Measure No. 925 was issued, in a unilateral reissuance of canceled air travel tickets.

Having made this introduction, let us analyse the legal aspects concerned, starting from the serious and repeated problem of an abuse of the use of provisional measures that, in the case of the pandemic caused by SARS-Cov2, encountered, as mentioned above, consumers who lost their economic capacities and, as a result, should not be the financiers of airline losses.

2 PROVISIONAL MEASURE NO. 925 OF MARCH 18, 2020

In a work of essential reading, Diniz (2000, p. 286) presents a history of provisional measures; in the chapter, he teaches the reader that the law is a result of legislative activity. Making it clear that they are not laws, he warns that, in the exercise

[1]. Ihering made reference to the “concrete right” as a whole, including laws, in the famous phrase contained in the work referred to in the text: “The concrete right that, once formed, requires a minimum duration, that is, it aspires to eternity, resembles the son who raises his arm against his mother.”

of constitutional jurisdiction (Article 84, paragraph XXVI, of the Federal Constitution of 1988), the President of the Republic can use this instrument in cases of importance and urgency, extolling the fact that the National Congress is responsible for the Executive's decision. The provisional measures have been issued without legal advisors intervening, taking into account the scope of the aforementioned legal expert, to point out potential excesses or omissions in their texts.

Provisional Measure 925 was wholly inaccurate. With only (4) articles, the first and the fourth of which were intended, respectively, to present its purpose and to declare its immediate validity, it did not specify, for example, from which date the counting of (12) twelve months for reimbursement started (BRASIL. 2020). What is apparent is that intervention by the National Congress was necessary in order to clarify several aspects that generate numerous consequences.

Unfortunately, recent history (our Federal Constitution - at the time of the conclusion of this paper - is only 32 years old) demonstrates abuse in the use of provisional measures.

This abuse was pointedly highlighted, in 2003, by one of the authors of this paper. In that critique, Vigliar (2003, p. 20) denounced the excessive abuse in the use of provisional measures:

> Unfortunately, there is a clear mismatch between theoretical devotion and the practice of legislative production among us, which cannot fail to be regarded as a significant political element for us to be even more concerned with the behavior of the Legislative authority and the need to devote more of our attention to the roles that jurisprudence must fulfil. I refer - although I hope that this situation is the result of a contingency and that this observation will soon become obsolete - in addition to the problems identified by the Minister of the Brazilian Supreme Court, José Paulo Sepúlveda Pertence, in the previous footnote, which highlight the reality of the approval of important legal instruments by the circumstantial majorities in Congress, in a given period, to the truly exceptional moment in which we are immersed, which underestimates the important instrument to the Rule of Law, which is the law. There has never been a period like the present to counter the most important Brazilian doctrine, be it the so-called General Theory of Law, or that of Civil Law. I refer to the unjustifiable behavior of the Executive of the Union, which facilitates, powers, sustains and encourages the true proliferation of the so-called provisional measures (pursuant to the Federal Constitution in Article 62), taking away from the legitimate law-issuing authority holder the possibility of producing this very important mechanism for determining the rights and duties of citizens. (VIGLIAR, 2003, p. 20)

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Certainly, it could not have been, in 2003, predicted or imagined that in a pandemic year, in the then-distant 2020, the issuing of a provisional measure could bring harm to consumers, even if converted into law.

In spite of its origin, the law, to aggravate the consequences, was still misinterpreted by the recipients of the benefits it created to the detriment of consumers.

Over the next few items, we will be concerned with demonstrating how a legislative act transformed the consumers of the services provided by aviation companies into their financiers, since, from (7) seven days for reimbursement (as provided by the legislation), the term was extended to a comfortable (12) months.

3 ON THE PURPOSE OF LAW NO. 14,034/2020 AND THE CONSTITUTIONAL GUARANTEE OF LEGAL CERTAINTY

As previously mentioned, the text of the legal background of the law under analysis was limited to fixing the dates for the withdrawal of flights that would be covered by the provisional measure, that is, those that occurred between 03/19/2020 and 12/31/2020. Accordingly, cancellations between these dates would provide benefits of the presidential act to the detriment of consumers.

The text of the law at least addressed a monetary correction, disregarding, however, the collection of interest due (which, in the future, is likely to lead to new judicial impediments).

Article 3 determines the correction based on the Brazilian National Consumer Price Index (INPC), which measures the inflation experienced by families with income of between one and five minimum wages and, when applicable, material assistance to the consumer.

Some airlines, however, invoking this authorization, included the amounts that had already been reimbursed, extending the benefit to earlier periods.

This is what the judges described below portray, being certain that, in some of the precedents, it was possible to detect the following characteristics: a) the ticket

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values had already been fully reimbursed; b) the legal relationship of substantive law between the consumer and the airline had already been completely extinguished; c) despite that, the supposed credit was reactivated and the airfare was reimbursed by credit card. That is to say: without a contractual basis, an obligation was created unilaterally so that the airline could avail itself of the benefit that was not contemplated even in the provisional measure, which is usually used incorrectly and to create situations that, inevitably, will be taken to the courts. A sinister interpretation, therefore, gathered momentum and was carried out to everyone's astonishment. To repeat: a new issue of tickets that had already been cancelled, with the charge to the consumer's credit card for a future refund, in the face of the text of the law, disregarding the elementary precept of the law (*alterum non laedere*).

The creation of an accessory consequence to the financing was envisaged, translated into the possibility of promoting a real resuscitation of a material legal relationship that had already terminated.

Diniz (2000, p. 500), quoting Del Vecchio, recalls that the legal relationship consists of “a connection between people, for which one may claim an asset to which the other is bound.” For this, recalls the legal expert, there is the need for a regulatory provision that disciplines this relationship.

There would not, however, even be the need to consider the absence of a legal relationship between airlines and their consumers, as a sufficient element to prevent this conduct that generates the aforementioned enrichment.

The reality, in the scenario we have analysed in this paper, revolves around the concept of the complete legal act, which cannot be distorted by innovative legislative activity, let alone by extensive interpretations.

For extensive interpretations, the authorizing consequence emerges that Telles Junior (1985, p. 369) tells us about in a work of essential reading:

> So, to ensure the permanence and effectiveness of the institutions, society and social groups delegate, to all those who are injured by the violation of legal rules, the authority to demand compliance with them or to repair the damage caused by the infringement. This means, in practice, that the violation of legal rules results in an *authorization*, which is granted by the community to those that the violation has harmed. No one can be compelled to conform to

> the effects of violating a legal rule. No one can be compelled to remain subject to the effects of the illicit action of another; to subject themselves to a harmful situation, imposed in disobedience to that mandated by the legal rule. (TELLES JUNIOR, 1985, p. 369)

The doctrine, as pointed out by Diniz (1994, p. 193), when addressing the consequences for complete legal acts from the moment when the new law comes into effect, categorically affirms that non-retroactivity is the rule and that, exceptionally, in order to retroact, the law should be expressed and "*not offend the acquired right, complete legal act and res judicata*."[2]

Earlier, the author transcribes the doctrine of Clóvis Beviláqua that demanded not only the legislator, but also the interpreter, to respect the complete legal act.

> The legal right wants the complete legal act to be respected by the legislator and the interpreter in the application of the law, precisely because the legal act is a generator, modifier or extinguisher of rights. (Apud DINIS, 1994, p. 180)

In relation to Law No. 14,034/2020, the precedents analysed below exposed a persistent attempt to disrespect the constitutional guarantee considered here, revealed by the attempt to restore a non-existent charge with resources from consumers who were no longer customers.

With the exception of the Federal Constitution of 1937, all others, since the Constitution of 1934, have guaranteed citizens the protection of the acquired right, the complete legal act and res judicata.

Inspired by the Polish semi-fascist model, the absence of such a guarantee is explained in the aforementioned Constitution of 1937, which instituted Getúlio Vargas's "Estado Novo" ("New State"), an authoritarian regime that lasted until the end of World War II.

[2]. The author gives the following considerations to the complete legal act: "The complete legal act is the one already consummated, according to the current regulation, at the time it took place, producing its legal effects, once the generated right was exercised. It is what has already become capable of producing its effects.

Naturally, in order to maintain an undemocratic regime, removing the guarantees that are part of the legal certainty clause was imperative; after all, in order to operate its abuses, an authoritarian government should not be impeded by a guarantee that would prevent it from legislating freely, to the detriment of citizens and the logic of the legal system.

With the end of the "Estado Novo", the Federal Constitution of 1946 restored legal stability. Consolidated democracies develop under the protection of legal certainty clauses, and it is certain that international investors point to legal uncertainty as one of the discouraging factors for investment in Brazil.

In the current era, in which the hyper-connectivity fostered by technological apparatus and the evolution of the media has given rise to the wide and rapid possibility of disseminating information on certain judgments (BARRETO JUNIOR; VIGLIAR, 2018, p. 5), the undue interpretation that is devoted to Law No. 14,034/2020 and which promotes immense legal uncertainty, as it disregards the complete legal act, causes an ever greater kind.

The fact is, not even MP 925 foresaw the possibility that companies would reactivate the sale for repayment after a year.

This interpretation, which, if tolerated, would promote unjust enrichment, as defined by França (1987, p. 345):

> Unjust enrichment, illicit enrichment or unlawful enrichment is the accrual of assets that is verified in the equity of a subject, to the detriment of others, without having a legal basis for this. (FRANÇA, 1987, p. 345)[3]

Before proceeding to the analysis of the cases that determined the filing of claims, aiming to prevent Law No. 14,034/2020 from having an abusive interpretation, it is worth highlighting some very recent Superior Court of Justice judgments that have been reiterating the need to protect the complete legal act.

[3]. After defining unjust enrichment, in a very similar way to that transcribed above, Gomes (1996, p. 250) presents the four elements that characterize it: a) the enrichment of someone; b) the impoverishment of others; c) the causal link between enrichment and impoverishment; and d) the lack of cause or an unjust cause.

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This highlight is due to the fact that it is up to the Superior Court of Justice, as provided for in the Federal Constitution of 1988, to standardize the interpretation of the infra-constitutional law that prevails in the Federation and, therefore, Decree-Law No. 4,657, of September 4, 1942, which it is the Introductory Law on the norms of Brazilian Law (as amended by Law No. 12,376, of December 30, 2010) that provides for the need for legislative innovation that does not reach the complete legal act.

4 RECENT PRONUNCIATIONS FROM THE SUPERIOR COURT OF JUSTICE ON THE NEED TO PROTECT THE COMPLETE LEGAL ACT

We highlight some judgments that tackle different themes, but all of which relate to sensitive issues, such as the environment, contribution and characterization of wrongdoings, to show that the legal certainty guarantee clause in question has been constantly under attack, with complaint about the intervention of the Judiciary. The judgments are from 2021, 2020, and 2018.

We will start with a 2021 trial, from Mato Grosso do Sul. This is an interlocutory appeal[4] filed in the previous interlocutory notices, relating to Special Appeal no. 1781548, of the aforementioned Member State.

The judgment analysed a situation in which the complete “and finished” legal act, as described by the court, was a complaint that, at the time of its offer, was not subject to the change brought about as an “anti-crime package.”

With respect to Article 171 of the Penal Code, paragraph 5 of this provision is not in force, which was introduced by Law No. 13,964/2019. There was, therefore, no provision for the prosecution to take place only with the representation of the victim, except for the scenario it describes.

We transcribe the following excerpt:

[4]. To consult the full content: https://www.stj.jus.br/sites/portalp/Processos/Consulta-Processual. In the “procedural consultation” field, enter the number that the appeal received at the Superior Court of Justice, which is 2020/0242374-7. The last consultation made by the authors took place on 03/20/2021.

> INTENDED RETROATIVE APPLICATION OF THE RULE OF ARTICLE 171, PARAGRAPH 5 OF THE CRIMINAL CODE? CP, ADDED BY LAW NO. 13,964/2019 (ANTI-CRIME PACKAGE). INFEASIBILITY. COMPLETE LEGAL ACT. CONDITION OF ACCEPTANCE. INTERLOCUTORY APPEAL DENIED. 1. The Fifth Panel of this Court understands that "(...) in addition to the silence of the legislator on the application of the new understanding on ongoing processes, it is clear that its effects cannot reach the complete and finished legal act (basis of the complaint), so that the retroactivity of representation in the crime of fraud should be restricted to the policing phase, not reaching the process" (AgRg in PET at AREsp 1649986/SP, Rel. Minister REYNALDO SOARES DA FONSECA, FIFTH PANEL, judged on 6/23/2020, DJe 6/30/2020). 2. Taking into account that a criminal complaint has already been received, including the issuing of a condemnatory sentence and a confirmatory judgment, there is no mention of retroactivity of the criminal legislation. 3. Furthermore, as concluded by the Court of origin: "(...) the police report conducted for the victim (f. 08), is enough for the initiation of a criminal prosecution, and there is no need to speak specifically with the nomen iuris of representation" (fl. 421). This understanding is in accord with the jurisprudence of this Court. 4. Interlocutory appeal denied.

The second precedent,[5] judged in 2020, deals with a relevant environmental issue. This is Special Appeal no. 171455, from the State of São Paulo, from the overlapping court.

The appellant and the Public Prosecutor's Office had signed a TAC (Conduct Adjustment Term). This is an extrajudicial enforcement order, provided for in Law No. 7,347/1985, which conveys obligations to those who cause losses to trans-individual interests (in the scenario, a diffuse interest - the environment).

The Superior Court of Justice understood that a new environmental law could not be retroacted to fulfil the TAC. This executive title could not pass - without a novation in the assumed obligations occurring - to demand an obligation that the law, at the time of its formation, did not foresee.

We transcribe the following excerpt:

> Complete legal act and non-retroactivity of the new law (which in the scenario created environmental obligations not included in the TAC - neither in the process of becoming aware nor in subsequent execution can it be modified, as otherwise it would disrespect the guarantee of non-retroactivity of the new

[5]. To consult the full content: https://www.stj.jus.br/sites/portalp/Processos/Consulta-Processual. In the “procedural consultation” field, enter the number that the appeal received at the Superior Court of Justice, which is 2017/0318840-0. The last consultation made by the authors took place on 03/20/2021.

> law, as stipulated in Article 6 of the Introductory Law on the Norms of Brazilian Law (Decree-Law 4,657/1942).

Both in 2018 and in 2020, the Superior Court of Justice ruled twice on the complete legal act, in matters of adoption.

In 2018, from the State of Minas Gerais,[6] Special Appeal no. 1503922 faced the so-called "simple adoption," carried out in the light of the Civil Code of 1916 and the right to inheritance of an adopted son, the plaintiff of the petition for inheritance.

In this case, the court concluded that the adoption went ahead under the revoked Civil Code and, as such, was embodied in a complete legal act, which generated a right acquired from the modification operated by the Federal Constitution, which expressly provided for isonomy between children (adopted or not). Such a regime must impose itself on the aforementioned adoption regime, which was clearly not accepted by the new Constitution.

It is worth transcribing the following excerpt:

> The simple adoption undertaken pursuant to the CC/1916, whose striking characteristics were to establish kinship only between adopter and adopted and to forbid the establishment of a right of succession between the adopted and the adopter's relatives, is a complete and consummate legal act, being indisputable in violation by rule of a constitutional or supervening legal nature. 5- The complete legal act and the acquired right, however, are conceptually distinct legal institutes, also because complete legal acts have the ability to generate mere expectations of law and not only subjective rights to the holder. 6- The act of simple adoption undertaken in compliance with the criteria and assumptions in force at the time of its consummation confers the right of affiliation, but does not generate the acquired right to the succession regime in force at that time, which will only be applied if there is an effective opening of the hereditary succession in the same legal act. 7- The complete legal act of simple adoption practiced under the aegis of CC/1916, when the distinction of family relationships was permitted from its origin, remains intact when a new constitutional order overlaps the rights and qualifications of children and prevents discrimination, insofar as the right of succession, which is distinct from the right of affiliation, will be governed by the law in force at the time of its opening, at which time was Article 227, paragraph 6, of the CF/88. 8- The divergence in jurisprudence, despite being sufficiently demonstrated, has not been proven sufficient to make the legal thesis established in the paradigm prevail. 9- Special appeal considered and denied.

[6]. To consult the full content: https://www.stj.jus.br/sites/portalp/Processos/Consulta-Processual. In the "procedural consultation" field, enter the number that the appeal received at the Superior Court of Justice, which is 2014/0323858-5. The last consultation made by the authors took place on 03/20/2021.

In the Special Appeal judged in 2020, also from Minas Gerais, the issue addressed the inclusion of the names of the adoptive parents on the birth certificate of the adopted child[7].

The certificate concerned, as understood by the Superior Court of Justice when judging the Special Appeal, has a contractual nature, presenting itself as a complete legal act that cannot be modified.

It should be noted in the transcript below that, unlike the 2018 judgment - analysed earlier - the applicant's intention was to modify the registration and not the right arising from the affiliation:

> The simple adoption undertaken pursuant to the CC/1916, whose striking characteristics were to establish kinship only between adopter and adopted and to forbid the establishment of a right of succession between the adopted and the adopter's relatives, is a complete and consummate legal act, being indisputable in violation by rule of a constitutional or supervening legal nature. 5- The complete legal act and the acquired right, however, are conceptually distinct legal institutes, also because complete legal acts have the ability to generate mere expectations of law and not only subjective rights to the holder. 6- The act of simple adoption undertaken in compliance with the criteria and assumptions in force at the time of its consummation confers the right of affiliation, but does not generate the acquired right to the succession regime in force at that time, which will only be applied if there is an effective opening of the hereditary succession in the same legal act. 7- The complete legal act of simple adoption practiced under the aegis of CC/1916, when the distinction of family relationships was permitted from its origin, remains intact when a new constitutional order overlaps the rights and qualifications of children and prevents discrimination, insofar as the right of succession, which is distinct from the right of affiliation, will be governed by the law in force at the time of its opening, at which time was Article 227, paragraph 6, of the CF/88. 8- The divergence in jurisprudence, despite being sufficiently demonstrated, has not been proven sufficient to make the legal thesis established in the paradigm prevail. 9- Special appeal considered and denied.

There are other important precedents, all of them very recent, all of them, similarly, addressing themes of great significance and, as expected, highlighting the impossibility of the law to act retroactively to reach the complete legal act8.

[7]To consult the full content: https://www.stj.jus.br/sites/portalp/Processos/Consulta-Processual. In the "procedural consultation" field, enter the number that the appeal received at the Superior Court of Justice, which is 2011/0006625-2. The last consultation made by the authors took place on 03/20/2021.

[8]. We highlight the following appeal, also decided in 2020 and which addresses the impossibility of modifying contractual private pension clauses, considering that the contract presents itself as a complete

5 PRECEDENTS GENERATED BY THE MISINTERPRETATION OF LAW NO. 14,034/2020

As mentioned at the beginning of this paper, the pandemic caused by SarsCovid19 resulted in the cancellation of numerous flights.

The bailout promoted by Law 14,034/2020, a bailout borne out of a provisional measure, would certainly bring problems to the most sensitive part of this relationship, forcing consumers to seek appropriate judicial protection.

In addition to being prevented from flying to the destinations contracted, and encountering the refusal to refund the amounts spent, they found themselves in the contingency of hiring lawyers and paying the procedural costs for cases that were not brought before the Special Civil Court, not to mention the economic woes that have plagued the nation.

Such consumers were forced to believe in the slogan of Chiovenda (1930, p. 110) who, back in the 1930s when addressing the effectiveness of the process, stated that "*The process should give, as far as possible, to those who have a right, all that and exactly what they have a right to achieve*."

Numerous demands were filed in 2020 dealing with the refund of the amounts paid for air tickets for flights that did not run, and the methodological view of our research, in order to be able to find representative precedents of the abuses generated by the new law, was precisely the references contained in the judicial decisions to have alluded to the law or its provisional measure that generates debatable legality, as previously discussed.

legal act: CLARIFICATION MOTION IN THE APPEAL AGAINST THE RULES OF APPEAL PROCEDURE IN THE SPECIAL APPEAL AGREEMENT in AGRg at AREsp 306833-MS. For access to the judgment, use the same method indicated in the previous footnotes, entering the number 2013/0058936-3 in the "procedural consultation" field.

We will start with two judgments that have resolved the conflicts incase nos. 9008093-33.2020.8.21.0001 and 1010673-41.2020.8.26.0032, from Rio Grande do Sul[9] and São Paulo, respectively.[10]

Interestingly, a solution was given due to the acquired right in these two judicial decisions, since Article 49 of the Consumer Protection Code (Law No. 8,078, of September 11, 1990), establishes the right of retraction, provided it is exercised within the stipulated period of (7) days. The judgments understood that it was not a question of reimbursement, in those concrete scenarios analysed, determining the refund of the amount due to the expressed retraction. Therefore, in these two scenarios, Law No. 14,034/2020 should not even be considered.

In another precedent in the Federal District, the characterization of fortuitous cases and force majeure, caused by Covid-19, was sought, which would have determined the modification of the air network, as a result of flight cancellations. In this case (no. 0701195-97.2020.8.07.0004) the airline tried to apply Law No. 14,034/2020 to an event that occurred on February 6, 2020, which was before the issuance of Provisional Measure 925. The Court of Justice upheld the company's conviction,[11] considering the inapplicability of the law.

Briefly cited, the new law cannot retroact to reach events prior to its validity, which was also recognized in another judgment, also from the Federal District (case no. 0715727-40.2020.8.07.0016)[12]. In this specific case under analysis, the event that gave rise to the indemnity required in the case occurred on February 7, 2020, making it impossible to apply the law and the aforementioned provisional measure.

Expressly concerning the impossibility of the law currently under analysis to retroactively reach the complete legal act, the judgment of case no. 1033816-

[9] . The full content of the judgment can be consulted at the following research site: https://www.jusbrasil.com.br/processos/287759497/processo-n-9008093-3320208210001-do-tjrs.

[10] . The full content of the judgment can be consulted at the following research site: https://tj-sp.jusbrasil.com.br/jurisprudencia/938130050/recurso-inominado-civel-ri-10106734120208260032-sp-1010673-4120208260032.

[11] . The full content of the judgment can be consulted at the following research site: https://tj-df.jusbrasil.com.br/jurisprudencia/1136171986/70119597202080700 04-df-0701195-9720208070004.

[12] . The full content of the judgment can be consulted at the following research site: https://tj-df.jusbrasil.com.br/jurisprudencia/1136171989/715727402020807001 6-df-0715727-4020208070016.

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07.2020.8.26.0114, from São Paulo, whose following excerpt is worthy of a transcript, considering that, in addition to listing numerous judgments on the law's non-retroactivity, summarizes the Federal Supreme Court's understanding on the subject:

> It should be noted that, with respect to the form of restitution, Law 14,034/2020, the provisional measures that precede it, and ANAC Resolution 556/2020 do not apply to the previous complete legal acts. The new law can only be applied to contracts concluded after its issuance, without retroactive effect. In this respect, Article 5, paragraph XXXVI of the Federal Constitution (the law will not prejudice the acquired right, the complete legal act and the res judicata), which obviously prevails over the law.

The aforementioned summary of the Federal Supreme Court's understanding describes vast jurisprudence on similar cases which underpin its decision. We highlight the following:

> COMMITMENT FOR PURCHASE AND SALE Declaratory action combined with contractual termination and request for refund of payments made - Sentence of partial validity Determination of return of amounts paid, recognizing the defendant's right of retention - Inapplicability of Law no. 13,786/2018 (Law of Termination) Non-retroactivity of the law to a contract entered into prior to its validity Previous Return of amounts paid immediately and in one single installment, […]. (Civil Appeal no. 1082705-68.2019.8.26.0100, from the District of São Paulo, 11th Chamber of Private Law of the São Paulo Court of Justice, judgment on June 29, 2020, rapporteur Appeals Court Judge MARCO FÁBIO MORSELLO) I transcribe the Court Decision cited: Thus, in cases such as this, the consumer, when contracting the product or service, acquires the right to the legal regime in force for the business entered into at the time of contracting. Furthermore, in this respect it is the guidance of this São Paulo Court of Justice: COMMITMENT FOR PURCHASE AND SALE OF REAL ESTATE - Termination motivated by the default of the buyers' commitments - Intention to retain 10% of the total value of the contract, pursuant to Article 32-A of Law 13,786/18 - Inadmissibility, since the contract is prior to the validity of this regulation - The acceptance of the claim would result in a violation of the complete legal act and affront the principle of non-retroactivity provided for in Article 6 of the Introductory Law on the Norms of Brazilian Law - Maintaining the percentage of retention determined in the sentence, of 10% of the amounts paid by the defendants and also provided for in the contract - Precedents of the Court - Sentence of partial origin upheld - Appeal dismissed, increased the fees attorneys owed by the appellant to the defendant's attorney-at-law from 10% to 15% of the lawsuit costs (Article 85, paragraph 11, of the NCPC). […] [13]

[13]. The full content of the judgment can be consulted at the following research site: https://www.jusbrasil.com.br/diarios/documentos/1179029109/andamento-do-processo-n-1033816-0720208260114-procedimento-do-juizado- especial-civel-12-03-2021-do-tjsp.

The precedents are multiplied in the sense of the non-retroactivity of the new law to reach the complete legal act.

This was also the guideline found in case nos. 1040203-80.2020.8.26.0100, 1028512-27.2020.8.26.0114 and 1031770-36.2020.8.26.060, all from São Paulo.[14]

To conclude, we allude to case no. 1009298-53.2020.8.26.0016, processed by the 1st Court of the Special Civil Central Court of São Paulo, whose non-appealed sentence recognized the impossibility of the new law applying retroactively to reach the complete legal act. Analysing the records, it appears that the airline, in addition to not respecting the legal certainty clause, reissued the collection of tickets, after the return and extinction of the legal relationship it maintained with the consumer, committing two illegalities: the intended retroactivity law and the collection, without being contracted, as the reimbursement had already been made prior to the legislative instruments analysed ed in this paper[15].

6 CONCLUSIONS

Covid 19 has led to numerous legal consequences, and in this paper we highlight the attempt to extend a benefit created by a law to complete legal acts.

The Federal Constitution of 1988 expressly recognized, in Article 5, paragraph XXXVI, legal certainty as one of the guarantees of the citizen. That provision refers to the acquired right, the complete legal act and the res judicata, as clauses that restrict the legislative activity that may introduce changes to the infra-constitutional legal system.

14. The entire contents of the judgments can be consulted, respectively, at the following research sites: https://www.jusbrasil.com.br/diarios/documentos/1125698669/andamento-do-processo-n-1040203-8020208260100-procedimento-comum-civel-praticas-abusivas-17-11-2020-do-tjsp; https://www.jusbrasil.com.br/diarios/321749076/djsp-judicial-1a-instancia-interior-parte-i-15-10-2020-pg-1866; and **https://www.jusbrasil.com.'br/processos/343120469/processo-n-1031770-3620208260602-do-tjsp.**

15 . To consult the judicial records: https://esaj.tjsp.jus.br/esaj/portal.do?servico=190090, select "Consulta de Processos do 1º Grau" and enter the relevant record number.

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The guarantee of the complete legal act was neglected due to the misinterpretation of Law No. 14,034/2020, which provides for emergency measures for Brazilian civil aviation due to the Covid-19 pandemic.

These extensive interpretations required judicial intervention to make it absolutely clear that the legislative innovation cannot reach such acts. Considering that the purchase of airline tickets is made, almost entirely, by the digital means available, the intention of the suppliers of these services, who tried to fulfil the cancellations that had been concluded even before Provisional Measure 925, causes, in the Information Society era, unacceptable legal uncertainty for consumers.

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