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The Impact of Covid-19 on the Summary Procedure of Indecopi Lambayeque 2020-2023

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Abstract

The purpose of this article is to show a preview of the panorama that is observed in the summary procedure for consumer protection from Lambayeque during the period 2020 to March 2023, as a consequence of Covid-19. For this, it has been considered important to define the terms consumer and supplier, as market agents; likewise, provide the scope of the summary procedure and identify the most denounced economic sector during the indicated period and the conduct with the greatest concurrence to be questioned; and thus determine the impact of the declaration of the State of Emergency by Covid-19 on consumer issues. In the investigation carried out, it has been observed that during the period 2020 to March 2023, 3,512 administrative complaints were filed before the Indecopi Lambayeque Summary Procedure; of which, 1,510 correspond to the banking and financial sector; also identifying that the conduct referring to unrecognized operations in said economic sector turned out to be the infringing act with the greatest questioning, while 839 complaints were filed that revolved around said matter; This allows us to determine that the Covid-19 has generated an impact on the protection of the Lambayeque consumer in the summary procedure of Indecopi.

Keywords: Consumer, Covid-19, Indecopi, Provider, Summary Procedure.

Introduction

The Consumer Protection System is erected, as indicated in Article 58 of the Political Constitution of Peru, based on the Social Market Economy Regime, which was adopted as a constitutionally defined economic regime, having in theory, a base based on three fundamental pillars: the autonomy of the economic agents that make up the economy, The recognition of the freedoms regulated both by the Magna Carta as well as by the complementary laws within the Peruvian legal system and by the principle of subsidiarity of the State, which is in reality the only edge where we can see the "social" of this social market economy.

Many authors, such as Hernandez (2018), state that although consumer law is applied more or less uniformly in the United States, the European Community, and all the states belonging to the United Nations, hereinafter UN, its appearance is reflected in the need to materialize equality and restore the balance of relations between the suppliers of various products or services and the consumers who require them. through the performance of various economic activities. Thus, although at a formal level we can speak of the defence of consumer rights from the directives adopted in 1985 by the UN Assembly, these have a somewhat earlier basis, since

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at the end of the Second World War the so-called welfare state was implemented in the industrialized states. which consisted of improving the quality of life of the members of the societies that could afford it, thus generating the basis of what we know today as a consumer society, having as its main pillars advertising and sales on credit.

That is where we can appreciate the genesis of consumer law, since having a new social reality, it was required that the law begin to guarantee the harmonious coexistence of these actors, say supplier and consumer, so that both see their rights fully satisfied. Thus, in the 60s, with the coining of the terms consumer and consumer relationship, the criterion that links consumer rights with a much older one was formally born, which is the principle of caveat emptor, which is nothing more than, as Roldán (2021) indicates, the buyer's obligation to ensure, to a reasonable extent, that the good or service you purchase does not contain any hidden defects.

Within this global panorama, we can therefore appreciate that in 1962, consumer protection principles were established for the first time in the United States, by the hand of John F. Kennedy, in a formal way, which would give way to the current working system of Consumers International, which bases its work system on eight basic consumer rights. which are the right to the satisfaction of basic needs, the right to security, the right to be informed, the right to choose, the right to be heard, the right to reparation, the right to education as consumers and the right to a healthy environment, all of which are included in the preliminary title of the Consumer Protection and Defense Code. regulated by Law No. 29571, hereinafter referred to as the Code, which implemented, among its improvements, the creation of the summary procedure, as a speedy and agile way to elucidate consumer disputes.

Regarding the Code, Baca (2013) considers that it marks a difference with the regulations previously issued in this area; highlighting the implementation of the Summary Procedure, as a single-person body with powers to elucidate disputes in consumer matters.

For Sarria (2011), the Code is an innovative mechanism for the protection of consumers, because for the first time it included public policies and the principles by virtue of which its provisions will be applied and interpreted. It also highlights the recognition of INDECOPI as the National Consumer Protection Authority, which will ensure compliance with the rules of the Code.

On December 1, 2010, the Summary Procedures Resolution Body (hereinafter, the OPS) began its functions at the Regional Office of Indecopi Lambayeque (hereinafter, ORI Lambayeque).

Prior to the implementation of this procedure, the Consumer Protection Commissions of the Central Headquarters and those attached to the Regional Offices that had such a delegation, were the only administrative authority in consumer matters.

More than ten years have passed since PAHO began operations in our region; and during that period the state of emergency was declared in the country; Therefore, I have thought it necessary to prepare this article, posing the following problem: To what extent has Covid-19 had an impact on Lambayecan consumer protection through the Summary Procedure of Indecopi during the period 2020 to March 2023?

Since the inception of the summary procedure, the OPS of the ORI Lambayeque has processed administrative complaints that question products and services provided by the various economic sectors; therefore, the main objective of this article is to determine to what extent the Covid-19 pandemic has had an impact on Lambayecan consumer protection in the summary procedure of Indecopi.

In order to achieve the main objective detailed in the preceding paragraph, I consider it necessary to establish as a specific objective the identification of the economic sector most denounced as a result of Covid-19 and the conduct with the greatest concurrence to be questioned; and thus determine the impact that it has generated in terms of consumption in our region.

Content

In the market, the consumer and supplier are identified as economic agents; defining the first of them as those who contract a service or acquire a good for personal, social and immediate purposes, outside of any commercial activity, exceptionally considering as consumers micro-entrepreneurs who are in information asymmetry with respect to the good or service, object of controversy.

In the words of Lasarte (2010), the subject who acquires goods or services for his own use or to satisfy his personal or family needs should be considered a consumer.

Likewise, Carbonell (2018) defines a consumer as one who acquires, uses or enjoys a good or service as the final recipient; it is not necessary for that condition to fall on the same party that concluded the consumer contract; Including within this concept micro-entrepreneurs who are in an obvious situation of information asymmetry vis-à-vis the supplier, on those products or services that are not part of the line of business.

The Code, when talking about services or products that are part of the business of micro-entrepreneurs, states that we must understand as such those who are closely linked to their business activity; that is to say, they are indispensable and irreplaceable elements for it to be carried out; Among them, he cites the raw material that is used as an input for the manufacture of products, the instruments and/or machines that are required for the provision of services. It also indicates that the so-called services that cut across the economic scheme (financial services, transport or advertising), although they facilitate business activity, are not essential for its development.

On the other hand, the Code defines suppliers as natural or legal persons, under private or public law, who habitually carry out activities in any of the links of the production chain (production, transformation, industrialization, marketing and distribution). In other words, those who occasionally offer goods or services would not qualify as suppliers.

The concept of supplier also includes natural and legal persons who offer intermediary services to other agents who have established a direct contractual link with consumers. This implies that the quality of supplier does not fall only on the one who offered the good or service, but on each of the agents who work in some of the stages of the production chain; which would determine, if applicable, the degree of responsibility for any conduct that constitutes an infringement of the rules of the Code.

With regard to habituality, it states that the person will qualify as a supplier, even if he or she does not carry out commercial activities in places open to the public, it is sufficient that his or her function is carried out in a common, repeated manner and with the aim of remaining in it; It also states that this criterion is not subject to a specific number of transactions.

The Summary Procedure Established by the Code

Article 124 of the Consumer Law establishes the implementation of a consumer protection procedure of a special, expeditious or agile nature for those cases that fall within its competence. Within this we find the affectations of an individual nature, affectations according to the amount, provided that the cost of the service or product is not greater than three (3) tax

units; depending on the subject matter, the OPS may hear cases involving the non-response of claims or requirements, collection methods that qualify as abusive, the delay or non-delivery of products without considering their amount; as well as intervening in the so-called enforcement procedures (breaches of conciliatory agreements, corrective measures, precautionary measures and payment of costs and costs; as well as settlements of costs and costs); and other administrative procedures of a punitive nature.

In order to complement the above, it should be noted that complaints involving matters involving risks to life, health and integrity are not processed under the summary procedure; as well as acts of discrimination or differential treatment or other conduct that affects collective or diffuse interests and those that refer to products or services with an asset estimate greater than three (3) Tax Units (UIT) or are not quantifiable.

The decisions of the summary bodies are subject to appeal, which is evaluated by the Consumer Protection Commission or the Commission with decentralized powers in this area; the resolution of which shall consider the administrative remedies exhausted. This decision could be challenged in court through the contentious-administrative process.

In this regard, Rojas (2017) considers that the assumptions that would allow this procedure to be classified as special are related to the term (30 working days per instance), the prioritization in applying the principles of speed and preclusion; and, the fact that competence lies with a head as a single-member body, whose decision is subject to appeal, a remedy that is granted with suspensive effect, except for decisions issuing precautionary orders.

The implementation of the OPS as a single-person authority is closely related to one of the public policies contemplated in the Code, which establishes the obligation of the State to provide expeditious mechanisms to resolve disputes in consumer matters.

In March 2020, our country was declared in a state of emergency due to Covid-19; Therefore, this article will show a preview of what has been arising within the summary procedure of consumer protection of Lambayecan.

Lamayecan Consumer Protection Through the Summary Procedure as a Result of Covid-19

As a result of the Covid-19 pandemic, there was a global crisis, which led to the acceleration of a stage of digital transformation, generating the need to establish greater consumer relationships through virtual platforms.

In this regard, Fournier (2021) differentiates between digitalization and digital transformation, defining the former as the automation of processes without significant impact; and the second, he qualifies as a superior link, as it encompasses digitalization and generates a profound change in the organization.

Esnaola (2021) points out that changes are being experienced around the world that influence the behavior of consumers, whose consumption habits are more dynamic over time; So they are looking for brands that offer them guarantees, transparency and security. In addition, to become more selective; where the suggestions and recommendations of other consumers turn out to be key to fostering trust in companies.

In the same vein, Markaide (2021) highlights the elimination of the space-time barrier as one of the consequences of Covid-19, as all economic sectors have experienced an evident growth in the use of *online channels*. He also indicates that this new way of making purchases will allow the construction of a new society.

This article will show a preview of what has been arising within the summary procedure of consumer protection in Lambayeque; focusing on identifying the most denounced economic sector from the beginning of the pandemic to March 2023 and the conduct with the highest number of cases to be questioned; and thus determine the impact that it has generated in terms of consumption in our region. To this end, the statistical data obtained from the Lambayeque ORI will be taken into account.

During the sample period, which ranges from January 2020 to March 2023, a total of 3512 administrative complaints were filed with the OPS, as shown in the following table:

Table N 01: Complaints Filed.

Year	Number of Complaints
2020	688
2021	1103
2022	1334
2023 (March)	387
TOTAL	3512

Source: Ori Lambayeque.

Likewise, it is pertinent to point out the most denounced economic sectors within the period referred to in this research, that is, between January 2020 and March 2023, it can be observed that the banking and financial system is by far the one that receives the most complaints, reaching almost 50% of the total complaints filed, which can represent a rather worrying panorama since it is the financial system, in Peru, as in all societies, it is the basis that supports the economic growth of the state.

Everything said in the previous paragraph can be seen corroborated in the following table:

Table N 02: Most Denounced Sectors.

Year	Sector	Number of Complaints	Subtotal
2020	Banking & Finance	325	688
	Wholesale & Retail	131	
	Insurance	50	
	Telecommunications	35	
	Transport	28	
	Other	119	
2021	Banking & Finance	466	1103
	Insurance	186	
	Wholesale & Retail	171	
	Transport	67	
	Telecommunications	38	
	Other	175	
2022	Banking & Finance	553	1334
	Wholesale & Retail	152	
	Insurance	111	
	Transport	79	
	Telecommunications	51	
	Other	388	
2023	Banking & Finance	166	387
	Insurance	76	
	Wholesale & Retail	42	
	Transport	25	
	Real Estate	17	
	Other	61	
TOTAL			3512

Source: ORI Lambayeque.

From the tables shown above, it can be seen that during 2020 to March 2023, 3512 complaints were filed, of which 1510 correspond to the banking and financial sector; It is identified as the most denounced economic sector, as it represents 42.99% of the total number of complaints made in the aforementioned period.

Likewise, it is necessary to identify the infringing act with the highest questioning within the banking and financial sector; as shown below:

Table N 03: Most Reported Offending Conduct and/or Event.

Year	Sector	Number of Complaints	Most Reported Conduct	Number of Complaints
2020	Banking & Finance	325	Unrecognized Transactions	150
			Other Behaviors	175
2021	Banking & Finance	466	Unrecognized Transactions	232
			Other Behaviors	234
2022	Banking & Finance	553	Unrecognized Transactions	337
			Other Behaviors	216
2023	Banking & Finance	166	Unrecognized Transactions	120
			Other Behaviors	46
TOTAL				1510

Source: Ori Lambayeque.

From the reading of the aforementioned table, it has been feasible to identify that the questions involving unrecognized operations have been the conduct and/or infringing event with the highest rate of complaints during the period 2020 to March 2023, to the extent that 839 complaints have been filed; In other words, 55.56% of the cases presented in the banking and financial sector revolve around this issue.

Regarding this conduct (unrecognized operations), it is necessary to bring up what was stated by the Indecopi Chamber, specialized in Consumer Protection, which through Resolution No. 2610-2022/SPC-INDECOPI of December 5, 2022, considers that the procedures for unrecognized operations should be evaluated if the banking entity complied with its duty to monitor and detect operations; and after that, analyze whether the charges, subject matter of controversy, were made in compliance with the requirements of validity established by law. It also states that when assessing the consumption pattern, all the transactions carried out by the holder of the credit instrument by period must be analysed, and the rest of the transactions carried out against the customer's credit card must be considered in addition to the disputed consumption.

With regard to the security measures that financial institutions must comply with, it indicates that these involve monitoring the consumer's operations, so that, when carrying out an operation, the financial institution can detect the occurrence of an unusual action; and thus execute immediate actions that aim to minimize the negative consequences that may arise.

The context of the Covid-19 pandemic has led to an increase in operations through virtual platforms, which, although they facilitate access to the banking and financial sector, could lead to transactions by third parties, thus harming the consumer's economy.

Along these lines, Cavero (2016) points out that consumer law aims to strengthen consumer decisions, generating an impact on the economy; offering you effective protection through specialized, expeditious and low-cost procedures.

It is undeniable that Covid-19 has had an impact on Lambayecan consumer protection in the summary procedure; noting that during the period 2020 to March 2023, a total of 3512 administrative complaints were filed with the OPS; Of these, 1510 correspond to the banking and financial sector, the economic sector that has been identified as the most denounced, as it represents 42.99% of the total complaints made in the aforementioned period. Among the other economic sectors we find wholesale and retail sales, insurance, telecommunications, transport, education, real estate and others.

Likewise, it has been identified that conduct referring to unrecognized operations in the banking and financial sector turned out to be the most questioned infringing event during the indicated period (2020 to March 2023), to the extent that 839 complaints have been filed; In other words, 55.56% of the cases presented in the banking and financial sector revolve around this issue.

The economic panorama that arose within the summary procedure in the Lambayeque region generates the need for the adoption of effective and efficient legal mechanisms by Indecopi, as the national consumer protection authority, to counteract this situation; and ensure adequate consumer protection.

Conclusions

The Consumer Protection System has been built on the basis of the Social Market Economy Regime, an economic regime included in our Magna Carta of 1993; and by virtue of which our consumer regulations were issued.

Consumers and suppliers are the agents of the market, the former being defined as those who acquire a service or good for immediate purposes, outside a commercial environment, with the exception of micro-entrepreneurs who have information asymmetry; and the second as one who offers goods or services within the production chain.

Law No. 29571 implemented the creation of a consumer protection procedure of a special and expeditious nature under the responsibility of the Adjudicatory Body of Summary Proceedings, a single-person administrative authority with powers to elucidate consumer disputes, in accordance with the scope of its competences.

The implementation of the Summary Proceedings Resolution Body as a single-member authority is closely related to one of the public policies contemplated in our consumer regulations, which establishes the obligation of the State to provide expeditious mechanisms to elucidate consumer disputes.

Covid-19 caused a global crisis that accelerated the stage of digital transformation, also generating the need to establish greater consumer relationships through virtual platforms. This context has influenced the behaviour of consumers, whose consumption habits are more dynamic over time.

During the period 2020 to March 2023, the banking and financial sector and conduct related to unrecognized operations were identified as the sector and the infringing event with the highest incidence of complaints; determining that Covid-19 has had an impact on the protection of the Lambayecan consumer in the summary procedure of Indecopi.

Gratitude

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