Chapter 8

Online Dispute Resolution for Consumers in Portugal and in the European Union: The Future Platform for Online Dispute Resolution

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ABSTRACT

Administration of Justice became complex in Consumers and Information Society. It is necessary to look for new solutions for the increasing situations of consumer’s litigation. Traditional State Courts are not a solution due to their slow, heavy and costly ways of functioning. The way is clearly open for Arbitration Centers based in friendly mechanisms such as mediation, conciliation and arbitration. Regulation EU nr. 524/2013 of European Parliament and Council of the 21st of May on online consumer’s conflict resolution has as aim the creation of a conflict resolution platform at European level. We propose to analyze the Regulation and its implications and to show the functioning of the platform that is being developed and that should be available for both for consumers and corporations from 9th January 2016 on. It will be analyzed the new requirements of access to Justice in the field of Consumer’s conflicts, the new ADR Directive and the regulation on ODR in order to meet the challenges brought along by the introduction of the new platform for conflict resolution.

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INTRODUCTION: THE ADVENT OF THE SOCIETY OF CONSUME AND OF INFORMATION

The 20th century saw the advent of automobile as the main mean of transportation in modern industrialized societies, and the banalization of airplanes in passenger’s transportation, superseding ships and even trains. Radio, television, personal computers, washing machines, are among hundreds of products that became banalized during the 20th century. And also the creation of new services kept growing during the same period. A quick search in Internet shows us a huge profusion of new services, going from translation services and internet pages creation to all kinds of touristic services (ecological, historical, sporting, radical, religious, sexual). If we think of informatics, we may think of personal computers, tablets, smartphones, an infinity of programs and apps allowing access to an infinity of new services: GPS systems, bar code lecture, localization of persons and objects, elderly support, restaurant or wine choosing, tickets sales for transportation or shows. The possibilities look almost infinite and everyday new services are announced.

Actually, the act of consuming becomes more related to a pleasure than to a need, and producers try to work hard at the level of marketing and publicity inducing the consumer to consume, to feel pleasure, to feel rewarded.

Truly, the problem in modern societies is not so much to produce but rather to sell. Corporations have been feeling a need to find alternative ways to the mere laws of the markets (demand and supply) in order to ensure the sale of the stocks. For this reason, publicity saw its role hugely increased.

But this is not merely a society of consume, it is also an information society. Never had mankind so much access to information. This society arises from a process of accelerated change, economical development and globalization of society and culture. Social economic development depends now on information and knowledge, but mainly of diffusion and sharing of information upon which knowledge is built. Many authors have theorized on the characteristics of information society. Gouveia and Gaio (2004) refer the contribution of several authors to this concept, such as Javier Echeverria to whom information society “is inserted in a process upon which the traditional notion of time and space is transformed by the appearance of a virtual space, trans-territorial and trans-temporal”, while for Noam Chomsky information society “is also the fruit of economic globalization in order to promote a huger circulation of capital and information in the hands of big entrepreneurial groups”. Thus being, information society is based in the way information is delivered to society through information and communication technologies dealing with information and turning this the central element of all human activities (Castells 2005). And of course, Internet is one of the key elements of Information Society.

Commerce could not be dissociated from the Internet. We can even state that it was the commercial applications of Internet that led to its huge success in such a short time. When Internet was discovered by corporations it had a quick diffusion and huge amounts were invested. Even before Internet and computers, there were already an interesting development of different modalities of distance commerce, such as sales by catalogue, by phone or by TV\(^1\). Electronic commerce is thus no more than a way of acquiring goods and services using for such purpose electronic equipments that allow to process and to archive data. It must be stated that in our work we will limit ourselves to the electronic commerce between a professional and a consumer (B2C) being consumer understood here in the sense of the Portuguese law\(^2\). Electronic commerce has been constantly growing, either at world\(^3\) or at national level\(^4,5\). Internet is thus becoming a gigantic virtual commercial shopping center gathering always more corporations and online consumers, making sales quickly rise and bringing along higher rates of conflituality. Thus be-