



The perspective of online dispute resolution: A tool for amicable composition in Colombian consumer law

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Abstract

This study investigates the effectiveness of Online Dispute Resolution (ODR) and Alternative Dispute Resolution (ADR) mechanisms in enhancing the resolution of consumer disputes in Colombia, identifying the inadequacy of traditional judicial processes to promptly and effectively address consumer rights violations as the primary research problem. It explores the integration of ODR into Colombia's dispute resolution framework, emphasizing the roles of the Superintendence of Industry and Commerce and the amicable composer in streamlining the resolution process. The study uses a qualitative approach, incorporating a review of existing legislation and practices related to ADR mechanisms and consumer rights. The analysis indicates that ODR, when supplemented by mediation and amicable composition, can effectively address consumer disputes. It is identified that the application of ADR through new ODR technologies should uphold principles of expediency, efficiency, and immediacy, as well as principles specific to the chosen ADR mechanism. This study is a novel exploration of the potential benefits and challenges of integrating ODR mechanisms in Colombia's consumer dispute resolution processes. It adds value by illuminating the roles of the Superintendence of Industry and Commerce and the amicable composer in this context. The study concludes that with appropriate regulatory frameworks and public policy, ODR can enhance access to justice and alleviate the strain on the state's judicial apparatus. It underscores the need for the State to define a policy that guarantees resources, structure, and defined rules to implement ADR mechanisms effectively.

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Introduction

Disputes possess the inherent potential to shape societies, interest groups, and organizations, underscoring the importance of facilitating peaceful resolution methods. In this context, Alternative Dispute Resolution (ADR) assumes significant relevance.

In Colombia, ADR mechanisms have achieved a constitutional status. Article 116 of the Political Charter, recognizing Conciliation and Arbitration as effective mechanisms for conflict resolution, affords arbitrators and conciliators temporary jurisdictional authority, elevating them to the same level as the State's jurisdictional apparatus (Political Constitution of the Republic of Colombia, Republic of Colombia, 1991).

Despite the constitutional norms excluding transaction and amicable composition from constitutional protection, it is worth noting that these elements still find recognition within the ADR in Colombia (Meza et al., 2021).

Upon analyzing Article 116 of the Political Charter systematically, it is inferred that facilitating access to justice, as codified in Articles 228 and 229 of the Charter, is not confined to the domain of judges. Indeed, individuals can also administer justice, granted the investiture of a transitional jurisdiction (Arrieta-López et al., 2021; Meza et al., 2018). At the international level, United Nations Resolution 57/18, otherwise known as the model conciliation law, gains particular relevance (Arrieta-López, 2022).

The regulation underwent amendments in 2018 to incorporate the concept of mediation, thereby permitting any person to act as a dispute resolution facilitator. Post reform, not only does the conciliator remain included, but any third party may assist the disputing parties in their effort to reach an amicable settlement relating to a contractual or other legal relationship, as per Article 1.3 of the Political Constitution of the Republic of Colombia (1991).

It merits clarification that, in this context, mediation is comprehended as a broader term employed in international scenarios, from which the essential elements of conciliation are derived (Isaza et al., 2018).

Along this line of reasoning, wherein conciliation and arbitration are recognized as ADR mechanisms, the concept of the amicable composition, as regulated by Colombia's law 1563 of 2012, a law that primarily focuses on arbitration in Colombia, cannot be neglected.

However, the amicable composition concept differs from the conceptualization proposed for a mediator. The latter, unlike the former, makes decisions on specific

matters, even though the effects of those decisions are viewed as a transaction.

Building on the introduction and the established framework of Alternative Dispute Resolution (ADR) mechanisms in Colombia, it is crucial to delineate the distinct characteristics and key differences among arbitration, conciliation, mediation, transaction, and amicable composition, ensuring a seamless integration and continuation of the discourse.

Arbitration in Colombia stands as a cornerstone of ADR, characterized by its formal structure and the binding nature of the arbitral award. This mechanism is particularly notable for its efficiency in resolving disputes, providing a legal framework under Law 1563 of 2012 that guarantees fairness and impartiality. Unlike other ADR forms, arbitration culminates in a decision that is not only final but also enforceable, mirroring the effect of a judicial ruling. This definitive aspect of arbitration sets it apart, offering a resolution that is both authoritative and final, thereby distinguishing it from more collaborative and consensus-driven approaches like conciliation and mediation.

Conciliation, as a voluntary process, emphasizes the role of a neutral third party in facilitating an agreement between disputing parties. Governed by Law 2220 of 2022, conciliation in Colombia aims to decongest the judiciary by encouraging parties to reach a mutually satisfactory settlement. This process stands in contrast to arbitration by prioritizing negotiation and agreement over a binding unilateral decision.

Conciliation, as a voluntary process, emphasizes the role of a legally empowered neutral third party in facilitating and legally validating an agreement between disputing parties. In Colombia, conciliation is characterized not only by its ability to decongest the judiciary through mutual settlements but also by the unique constitutional authority granted to conciliators. Unlike other ADR mechanisms, a conciliator in Colombia can legally validate the conciliation agreement, making the document as enforceable as an executed judgment once it is signed. This legal empowerment of the conciliator to validate the agreement elevates the outcome of the conciliation process, providing it with immediate legal validity. This distinctive feature of conciliation underscores its significance in promoting peaceful dispute resolution, setting it apart from arbitration, which relies on a formal tribunal decision, and mediation, which focuses more on the relational aspects of dispute resolution.

Mediation, though similar to conciliation in its emphasis on mutual agreement, introduces a less formal

and more flexible approach to dispute resolution. This mechanism's introduction through the amendment of Law 1563 of 2012 signifies a shift towards accommodating a broader range of disputes, including those where relational continuity is desirable. Mediation's distinction lies in its focus on restoring and maintaining relationships, making it an ideal choice for disputes that extend beyond mere contractual disagreements. Unlike arbitration and conciliation, mediation's success is not measured by the production of a legally binding document but by the parties' satisfaction and the preservation of their relationship.

Lastly, the transaction and amicable composition in Colombian law offer unique pathways to dispute resolution. The transaction, rooted in mutual concessions by the disputing parties, leads to a contractually binding agreement, distinct from the facilitated agreements of conciliation and mediation. Article 59 of Law 1563 of 2012 defines amicable composition as an alternative dispute resolution mechanism, through which two or more individuals, an individual and one or more public entities, or several public entities, or whoever performs administrative functions, delegate to a third party, called amicable composer, the power to define, with binding force for the parties, a contractual dispute of free disposition.

Its characteristics are as follows: It is a heterocomposite mechanism: The parties delegate to a third party the resolution of their dispute. Onerous: The fees and expenses of the amiable compositeur must be paid in order for the procedure to be carried out. Express: Requires express agreement of the parties. The amicable compositeur does not have to be an attorney: It can be any person who has been appointed by the parties, is a citizen in exercise and acts as agent of the parties. Transactional: The transaction produces the effect of *res judicata* in the last instance; but a declaration of nullity or rescission may be filed, in accordance with the preceding articles.

In weaving together these distinct strands of ADR, Colombia presents a comprehensive landscape of options for dispute resolution. Each mechanism, with its unique attributes and applications, contributes to a broader strategy aimed at reducing judicial backlog, enhancing access to justice, and preserving relationships. The careful delineation of these mechanisms not only clarifies their individual roles but also underscores the importance of selecting the most appropriate method based on the specific needs and context of each dispute.

Conversely, technological advancements in the telecommunications sector have transformed the internet into a dynamic and conducive medium for establishing and concluding commercial relations and transactions

among individuals. This transformation, referred to as e-commerce, has fostered significant growth in the global and digital economy, inevitably leading to disputes arising from discrepancies in such commercial relationships, whether in execution or compliance.

Under this backdrop, Online Dispute Resolution (ODR) in a globalized and interconnected world, could be leveraged as a tool providing an efficient and speedy solution to contractual performance issues. If the parties agree through an express clause, then in situations where there is a discrepancy in the execution of the legal business, and at the request of one of the parties, the amicable composition can be used through ODR mechanisms. This arrangement enables a third party to issue a decision with the same effects as a transaction, facilitating the continuity of the legal business or resolving the difference (Trujillo Cabrera, 2015).

The proposal intends to promote the resolution of contractual execution differences through a mechanism that accelerates its resolution and maintains contractual validity without exhausting the judicial apparatus (Arrieta & Meza, 2019), circumventing more wasteful stages due to the rigor of judicial terms (Goodman, 2002). This paper aims to demonstrate that ODR can be a practical tool for implementing amicable composition as an alternative dispute resolution method for consumer disputes and others. The discussion commences with a brief ODR overview, followed by a presentation of the amicable composition's essential aspects. Subsequently, the synergistic use of both tools and the intervention of the Superintendence of Industry and Commerce (SIC) will be analyzed, culminating with conclusions expressing proposals derived from this study. This paper leverages research tools and employs qualitative techniques such as literature review and critical analysis.

Literature Review

This section examines the body of literature on Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR), with a particular emphasis on their conceptual foundations, regulatory frameworks, and practical applications in both international and Colombian contexts. It explores the evolution of ODR as a complement to traditional ADR mechanisms, the role of technology in shaping dispute resolution processes, and comparative experiences from various jurisdictions. This review provides a theoretical and practical foundation to inform the subsequent methodological approach and analysis presented in this study.

The Emergence of Online Dispute Resolution (ODR)

Advancements in information and communication technologies underscore the prominence of ODR within our globally connected society (Arrieta-López & Carrasquilla-Díaz, 2021). It is imperative first to establish a definition for ODR in order to frame the subsequent discussion.

Echoing the perspective proposed by Orrego (2015), ODR can be comprehended as digital systems leveraging information and communication technologies (ICT) to deliver swift and effective resolutions to disputes occurring in the e-commerce domain. Irrespective of their contractual or non-contractual nature, these systems can be utilized by parties engaged in disputes emanating from commercial relationships.

Significantly, the Justice Studies Center of the Americas, an intergovernmental organization conceived by the Organization of American States' General Assembly to fortify justice system reforms throughout the Americas, characterized ODR as procedures and systems for dispute resolution, administration, or prevention outside of courts, mediated wholly or partially by a fourth party, i.e., technology (Justice Studies Center of the Americas [CEJA], 2022).

This organization makes valuable clarifications about the ODR concept, indicating the four parties involved are the two disputing parties, an impartial third party (mediator, facilitator, conciliator, or amicable compositeur), and technology, which serves as the fourth party in the process.

Further classifying technology's role, the Justice Studies Center of the Americas differentiates it into three categories. Firstly, when technology assists merely by enabling communication through platforms like Zoom or Teams. Secondly, when algorithms dictate the management and resolution of disputes. Lastly, when technology aids in dispute prevention (Hernández et al., 2021).

Building on this, the Center also distinguishes ODR according to the decision-making entity, labeling it as first-generation when a human makes the decision, and second-generation when an artificial intelligence undertakes this role (Liccioni, 2022).

ODRs primarily emerged to address transnational or cross-border dispute resolution in consumer affairs (Entelman, 2002; Halous, 2003; Simmel & Ceballos, 2010). E-commerce, which demanded enterprises instill trust in their consumers (Friedman, 1997), was a crucial instigator of ODR. In the event of disagreements, consumers must have access to quick, economical,

and practical tools to facilitate a prompt dispute resolution (Lide, 1996).

In Europe, ODRs predominantly exist within the context of consumer dispute resolution, employing mediation as an ADR. This approach aims to foster expedient, practical, and cost-effective procedures that safeguard the judicial protection of European citizens (Valbuena, 2015).

Regulation (EU) No 524 (2013) known as the ODR (Online Dispute Resolution) Regulation, was a groundbreaking piece of legislation by the European Union aimed at enhancing consumer protection in the digital age. The regulation established an online platform for resolving disputes between consumers and traders arising from online transactions. Its innovative aspect was the creation of a centralized digital platform accessible across EU member states, facilitating a straightforward, efficient process for consumer grievance redressal.

This regulation was pivotal in fostering consumer confidence in e-commerce by ensuring a reliable and accessible mechanism for dispute resolution. Although this platform was not designed exclusively for extrajudicial procedures, it did not exclude any form of ADR.

The United Nations Commission on International Trade Law (UNCITRAL) skillfully combines legislative and non-legislative frameworks to guide global commercial law, notably through its technical notes on Online Dispute Resolution (ODR) established at its 49th session in 2016. Although these notes serve as soft law, lacking binding force, they crucially outline foundational elements for the effective use of ODR in international commerce. This approach not only demonstrates UNCITRAL's commitment to modernizing trade law but also sets a precedent for the global acceptance and implementation of ODR practices.

These technical notes on on-line dispute resolution emphasize the necessity of ODR mechanisms for cross-border operations, enabling dispute resolution in a flexible, agile, and secure manner without necessitating the physical presence of parties (Marún, 2019; Osna, 2019). This involves the advancement of principles like impartiality, independence, efficiency, effectiveness, due process, fairness, accountability, and transparency (Al-Enizi & Aladaseen, 2019).

The UNCITRAL principles form a comprehensive framework that ensures the arbitration process is conducted with the highest standards. Impartiality and independence are the cornerstones, guaranteeing that arbitrators remain unbiased and free from external influences, thus maintaining the integrity of the process.

Efficiency and effectiveness are aimed at resolving disputes promptly while ensuring outcomes are meaningful and enforceable. Due process and fairness ensure that all parties receive equitable treatment and have the opportunity to present their case fully. Accountability emphasizes the responsibility of the arbitrators and the process to adhere to these standards. Lastly, transparency ensures that the process is open and clear, fostering trust among all parties involved. These principles collectively ensure a fair, efficient, and trustworthy arbitration process.

The Technical Notes further extend these principles into the digital domain, emphasizing impartiality, independence, efficiency, effectiveness, due process, fairness, accountability, and transparency. These key principles ensure that ODR mechanisms are not only accessible and swift but also uphold the highest standards of justice and equity, catering to both business-to-business and business-to-consumer transactions.

The main idea of the Technical Notes is to adapt dispute resolution mechanisms to the digital era's challenges, making them more suited to the global nature of e-commerce. This approach marks a significant evolution in dispute resolution, recognizing the need for processes that are as dynamic and borderless as the transactions they seek to resolve.

The UNCITRAL Model Law on International Commercial Mediation and International Settlement Agreements provides a standardized framework, facilitating the recognition and enforcement of settlement agreements globally. It ensures that parties can rely on mediated settlements with confidence across borders, detailing specific conditions under which such agreements can be invoked or challenged. Furthermore, it lays the groundwork for nations to craft laws on amicable resolutions, integrating the principles of the Singapore Mediation Convention to promote international trade harmony and dispute resolution efficiency.

The seventh Inter-American Specialized Conference on Private International Law (CIDIP-VII) featured two proposals by the Organization of American States (OAS). The first was a convention on applicable law presented by Brazil, Argentina, and Paraguay (the Buenos Aires proposal), and the second was a bid to establish a regional cooperation framework on ODR submitted by the United States, along with a model law for protecting credit/debit card payments, and a model law to strengthen consumer protection authorities.

The U.S. proposal, framed within a Model Law for the electronic resolution of cross-border consumer disputes in e-commerce, envisaged the establishment

of a state-endorsed initiative for resolving cross-border e-commerce disputes using ODR mechanisms (Marún, 2019).

However, the proposal for legislative guidance from the U.S. failed to gain traction, and so did the model laws attached to it (Albornoz, 2019; Narváez & Castilla, 2021).

On the other hand, the Buenos Aires proposal aimed to establish complex legal rules for consumer protection in distance commerce and tourism (Mania, 2015).

Considering the international momentum for ODR, it is crucial for Colombia to implement this tool domestically to expedite dispute resolutions effectively while reducing strain on the judicial apparatus.

The Justice Studies Center of the Americas emphasizes the importance for Latin America, including Colombia, of adopting ODR as a route to justice access, thus highlighting the need for continental connectivity. It also acknowledges the existence of initiatives like the \$500 million fund approved by the Inter-American Development Bank (IDB) to promote the digital transformation of Colombia's judicial system. Nevertheless, much work remains to fully implement ODR in Latin America (CEJA, 2022).

Leveraging Digital Tools for Enhanced ODR

In the evolving landscape of consumer rights protection, the advent of digital tools in Online Dispute Resolution (ODR) heralds a transformative era. The discussion focuses on the practical application of these tools, underscoring their pivotal role in reshaping dispute-resolution processes to be more efficient, accessible, and equitable.

The integration of digital platforms, as observed in initiatives like those by the Victorian Civil and Administrative Tribunal (VCAT) and the Legal Services Commission of South Australia, illustrates the significant steps toward embedding ODR within civil justice systems. These platforms, developed with advanced technologies by entities such as Modron, offer functionalities like video and text chat, which significantly enhance user engagement and streamline the resolution process (Tyrer, 2023).

The Civil Resolution Tribunal (CRT) in British Columbia, Canada, exemplifies innovation in ODR. As the first online tribunal integrated into the public justice system, it represents a comprehensive model for accessible, speedy, economical, informal, and flexible dispute resolution. Its structured four-stage process emphasizes the importance of collaborative and participatory resolution methods (Salter, 2017).

The global adoption of digital dispute resolution mechanisms, including the United Kingdom's "Transforming Our Justice System" initiative and the European Union's ODR platform exemplify the global shift towards digital-first legal processes. The UK's reform aims at modernizing its Courts & Tribunals Service to enhance efficiency and accessibility, reflecting the significant impact of technology on legal systems. Similarly, the EU's platform facilitates consumer complaint resolutions arising from online transactions, showcasing digital advancements in legal dispute resolution. These developments underscore the role of technology in improving legal access and procedural efficiency, marking a pivotal transformation in the justice landscape (Ahmed & Kramer, 2021).

In the United States, platforms such as Matterhorn and Modria have revolutionized the landscape of dispute resolution by leveraging digital technologies. These platforms facilitate a broad spectrum of dispute resolution aspects, from enhancing communication between disputing parties to enabling efficient mediation and arbitration processes. Their deployment across several states highlights the critical role of digital tools in making justice more accessible and streamlining legal processes. The adoption of Matterhorn and Modria not only exemplifies the potential of digital solutions to address traditional legal system challenges but also underscores the positive impact on user satisfaction and access to justice. This integration of technology in dispute resolution processes represents a significant stride towards a more efficient, accessible, and user-centered legal system (Shack & Shestowsky, 2022).

The utilization of digital tools in ODR reflects a commitment to making justice more accessible, efficient, and fair. These technologies not only streamline legal processes but also ensure that dispute resolution is inclusive, equitable, and responsive to the needs of a diverse populace.

The Future of ODR: A Vision of Digital Justice

The ongoing integration of digital technologies in ODR suggests a promising future for the field. Emerging technologies, such as artificial intelligence, blockchain, and virtual reality, hold the potential to further enhance the efficiency and accessibility of dispute resolution mechanisms.

The adoption of digital tools in Online Dispute Resolution (ODR) marks a paradigm shift in legal dispute resolution, especially in consumer rights protection. The analysis of specific platforms and technologies,

such as those implemented by Canada's Civil Resolution Tribunal and the ODR platforms within the European Union, illustrates how technology can transcend geographical and socioeconomic barriers, providing broader access to justice. These digital initiatives not only enhance the efficiency and accessibility of legal services but also promote fairness and transparency in dispute resolution processes.

Furthermore, the integration of artificial intelligence, blockchain technology, and synchronous and asynchronous communication tools into ODR systems offers a more personalized and effective approach to dispute management. These technologies enable the automation of processes that traditionally required significant time and human resources, thereby reducing the burden on judicial systems and improving user experience. The ability of these tools to analyze vast amounts of data and provide solutions based on applicable precedents and legislation underscores their potential to facilitate equitable and informed resolutions.

Incorporating digital tools into ODR represents a significant advancement toward democratizing access to justice. This approach not only addresses current challenges within the legal system but also lays a solid foundation for a future where justice is more accessible, efficient, and equitable for all. As these technologies continue to evolve, it is imperative for developers, policymakers, and legal professionals to collaborate to ensure that ODR solutions are inclusive, secure, and tailored to the changing needs of society. The strategic exploration and adoption of digital tools in dispute resolution not only reflect technological innovation but also a commitment to the continuous improvement of global access to justice.

Methodology

This study employs a qualitative approach, focusing on an in-depth legal analysis of documents relating to consumer law, online dispute resolution (ODR), and amicable composition. The data consists of a broad array of sources including, but not limited to, doctrinal texts, regulations, decrees within the Colombian legal framework, and pertinent international law documents. These were diligently retrieved, meticulously studied, and systematically interpreted.

The choice of a qualitative approach was motivated by the nature of the research question, which required an exploratory and interpretative examination of legal principles and practices. This method provides a means

to gain a holistic understanding of the application and implication of ODR as a tool for amicable settlement in the context of consumer law in Colombia.

A three-pronged criteria was adopted to ensure the selection of the most appropriate and relevant information for the study. First, the relevance and scope of each source to the proposed objectives were evaluated. This ensured that the sources directly contributed to answering the research question and achieving the study's aims. Second, an exhaustive review of all available sources was conducted to ensure comprehensive coverage of the topic, thereby reducing the risk of missing out on significant insights. Third, the timeliness or recency of the information was taken into account to ensure that the study reflects the most current trends and practices in ODR.

All collected data were then subjected to legal analysis, which involved the careful reading and interpretation of legal texts, identifying relevant legal provisions, principles, and cases, and drawing connections between these elements and the research question. This approach provided an avenue to deeply explore the intricacies of ODR in the Colombian context, as well as its potential applications in amicable settlements within consumer law.

By applying this rigorous methodology, this research hopes to contribute a nuanced understanding of the state of ODR in Colombia, and offer recommendations for its further development and application in the field of consumer law.

Results

This section presents the results of the legal analysis and documentary review conducted to assess the current state and practical application of amicable composition and Online Dispute Resolution (ODR) within Colombia's consumer law framework. It examines how these mechanisms operate in practice, the regulatory landscape that governs their use, and the role of key institutional actors such as the Superintendence of Industry and Commerce. The findings highlight both existing strengths and areas for further development in leveraging ODR to enhance consumer dispute resolution in Colombia.

The Amicable Composition in Colombia

In Colombia, a notable mechanism employed within the realm of alternative dispute resolution (ADR) is the amicable composition. This process engages a neutral

third party, known as an amicable composer, to assist in the definitive resolution of disputes between one or more individuals, public entities, or a combination thereof. Amicable composition in Colombia also draws from broader approaches to conflict resolution that emphasize the transformation of relationships between the parties involved (Gutiérrez et al., 2018; Montoya Sánchez & Salinas Arango, 2016).

The amicable composer in the Colombian context does not need to be a legal expert or a practicing lawyer. Yet, they are expected to have extensive and intricate knowledge of the subject matter in dispute. It is important to highlight that this mechanism is non-jurisdictional, meaning it does not constitute an exercise of jurisdiction. Instead, the amicable composer's intervention takes on the form of a transaction, as stipulated by the Civil Code (Rey-Vallejo, 2016).

Distinctive characteristics of this dispute resolution method include the amicable composer's specialized understanding of the subject matter and the ability to utilize various tools and instruments to compile a comprehensive technical report. As per the agreement between the disputing parties, the amicable composer is appointed, followed by an in-depth information collection and verification process through hearings. Through these hearings, the amicable composer can validate the material provided by the parties using a multitude of inquiry methods (Acedo, 2000).

According to Article 59 of Law 1563 of 2012, amicable composition in Colombia is defined as an alternative mechanism for dispute resolution. This mechanism allows a third party, also known as the amicable composer, to propose resolutions for contractual disputes of free disposal. These disputes can occur between two or more individuals, an individual and one or more public entities, multiple public entities, or any entities that perform administrative functions.

The role of the amicable composer is to propose potential resolutions based on their knowledge and expertise, rather than making a binding decision. They work to facilitate dialogue and promote understanding between the parties, helping them to reach a mutually agreed-upon resolution.

While this process has proven to be effective in numerous cases, the usage of amicable composition should be carefully considered based on the specific circumstances of each dispute. This is because, despite the potential for expedited resolution and reduced costs, the mechanism relies heavily on the expertise of the amicable composer and the willingness of the parties to reach a compromise.

The Role of the Superintendence of Industry and Commerce and the Implications of ODR on Consumer Rights and Duties

The Superintendence of Industry and Commerce, a regulatory authority in Colombia, plays an instrumental role in safeguarding consumer rights. In fulfilling its mandate, it carries out both administrative and jurisdictional functions, ensuring the enactment and enforcement of consumer protection laws.

Defined broadly, consumer law comprises the regulations established to protect both individuals and legal entities that engage in the acquisition, usage, or enjoyment of goods and services as end-users or consumers. Thus, the scope of consumer law encompasses the relationship between consumers and the enterprises that offer the goods or services being acquired or contracted (Acero et al., 2021).

The primary aim of these rules is to deter detrimental practices by businesses that can result in consumer deception, unexpected costs, or even personal injury. In essence, the creation of a legal bond is triggered upon the purchase of goods or a service contract, obliging the seller to uphold certain consumer rights and be held accountable for any violation of these rights or harm inflicted upon the consumer (Paz Sefair, 2018; Pico, 2017).

The State's role in this context extends to guaranteeing the protection of these rights and advocating for consumer education and information. The aim is to counteract any potential vulnerability that consumers may face in their interactions with enterprises offering goods and services (Vieira, 2022).

The issuance of Law 1480 of 2011 brought forth the Consumer Statute, formulated to protect, promote,

and guarantee the effective exercise of consumer rights (Noli et al., 2018). The Statute encapsulates provisions enabling consumers to assert their rights regarding a range of issues. These include the right to legal warranty, the right to information, the right to repair faulty goods and services, the right to reverse payments, knowledge of rights and obligations stemming from consumer relations, real estate guarantees, consumer education for children and adolescents, circumstances that permit the restriction of specific product marketing, protection against unfair terms, and oversight in technical regulation and legal metrology, among others.

Thus, the Superintendence of Industry and Commerce, mindful of the evolving regulations since the issuance of the aforementioned statute, has been instrumental in establishing guidelines that enable consumer protection. Through subsequent regulations, it has progressively reinforced measures to ensure comprehensive protection for consumers, validating the important role of the state in fostering a fair and balanced marketplace.

To ensure effective consumer protection, Colombian legislation has developed a set of regulations that address key aspects of e-commerce and related consumer transactions. **Table 1** summarizes the main decrees that establish rules governing various dimensions of consumer rights and obligations in the digital market place.

According to the Consumer Statute (2011), the rights and duties of consumers are as follows: The following key rights and corresponding duties are summarized in **Table 2**, which provides a clear overview of the consumer protections established under the Consumer Statute. This structured presentation helps to highlight the essential responsibilities and entitlements of consumers in the Colombian legal framework.

Table 1 Regulations guaranteeing consumer protection

| Decree | Detail |
|---------------------|--|
| Decree 1413 of 2018 | Regulates the manner in which the provider of a service that involves the delivery of movable goods, must dispose of them. |
| Decree 587 of 2016 | Regulates the conditions and procedure for the reversal of payments, when the acquisition of goods has been made through e-commerce. |
| Decree 1499 of 2014 | Regulates sales using non-traditional methods and distance sales. |
| Decree 1369 of 2014 | Establishes the requirements to be met by advertising regarding the environmental qualities, characteristics or attributes of products that generate environmental benefits. |
| Decree 1368 of 2014 | Regulates credit operations granted by natural or legal persons whose control and surveillance have not been assigned to the Superintendence of Finance. |
| Decree 975 of 2014 | Determines the cases, form, and content in which information and advertising must be presented. |
| Decree 735 of 2013 | Establishes the rules to enforce the legal and supplementary guarantees. |
| Decree 704 of 2012 | Establishes the criteria to be taken into account by the Superintendence of Industry and Commerce to determine the administrative sanctions. |

Table 2 Rights and duties of consumers in Colombia

| Rights | Duties |
|--|---|
| Right to obtain products with quality and suitability: Right to get in the market, from producers and distributors, goods and services that meet minimum requirements of quality and suitability to meet their needs. | Be informed about the quality of the products and analyze the instructions provided by the producer or supplier regarding their proper use, consumption, conservation and installation. |
| Right to be informed: right to obtain truthful, sufficient, accurate, timely and suitable information regarding the products and/or services offered or put into circulation, about the risks that may arise from their consumption or use, the mechanisms for the protection of their rights and the ways to exercise them. | To carefully analyze the information provided in advertising messages. |
| Right to complain: the right to go directly to the producer, supplier or provider of a service and obtain full, timely and adequate reparation of all damages suffered, as well as to obtain access to judicial or administrative authorities for the same purpose. | To act in good faith with regard to producers, suppliers and public authorities. |
| Right to obtain protection when signing a contract. Right to be protected from abusive clauses in adhesion contracts. | Comply with the rules of recycling and waste management of consumed goods. |
| Right of choice. Right to freely decide the goods and services they require. | To conclude transactions of goods and services within the legally established commerce. |
| Right to participation: to protect their rights and interests by organizing themselves, electing their representatives, participating and seeking to be heard by those who perform public functions in the study of legal and administrative decisions that concern them, and to obtain answers to their observations. | |
| Right of representation to make claims: consumers and users have the right to be represented by their organizations and spokespersons authorized by them in order to obtain solutions to their claims and complaints. | |
| Right to information: consumers, their organizations and public authorities shall have access to the mass media to inform, disseminate and educate on the exercise of consumer rights. | |
| Right to education: citizens have the right to receive information and training on consumption, consumer rights, ways to enforce their rights and other related matters. | |
| Right to protection against risks that may affect their health or safety. | |
| The right to a prompt response in administrative proceedings. | |
| Right to obtain protection of their rights through effective procedures. | |

The Defense of Consumer Rights in Colombia

When a consumer perceives a violation of their rights by a producer or supplier, they can approach the Superintendence of Industry and Commerce and lodge a complaint. Complaints can range from issues such as discrepancies in the quality, safety, and suitability of goods and services, to misinformation and false advertising, non-compliance with contractual obligations, abusive contractual clauses, or even unauthorized use of personal data (Acero et al., 2021; Paz Sefair, 2018; Pico, 2017).

Specifically, the aspects for which the consumer can file a complaint before the Superintendence of Industry and Commerce are the following: (1) Nonconformity with the quality, suitability and safety conditions of the good purchased or the service contracted; (2) Provision of information and/or advertising that does not correspond to the reality that induced you

to error or that was not truthful or sufficient; (3) For noticing the existence of an abusive clause in a contract or those that establish minimum permanence without any benefit to the consumer; (4) Failure to comply with the terms of the guarantee; (5) Lack of public indication of prices or indication of the same with erasures or amendments; (6) Failure to deliver a product; (7) For considering that you are being charged an interest rate higher than the legal maximum on sales financed directly by the producer or supplier of the product; (8) For not allowing you to exercise the right of withdrawal in the sale of goods or provision of services financed directly by the producer or supplier, sale of timeshares or sales using non-traditional or distance methods; (9) For warning that a measuring instrument is not giving the proper measurement; (10) For warning that the content of a pre-packaged product is less than that advertised on the packaging or labels; (11) For failure to deliver the incentives of an offer or promotion, or to comply

with the terms and conditions; (12) For having been reported negatively to the credit bureaus without a reason justified by law; and (13) For disposing of your personal information of a private nature or for giving it any treatment, without your prior authorization.

The expansion of global markets has accentuated the need for mechanisms that can expediently and effectively address consumer complaints. Alternative Dispute Resolution (ADR) mechanisms, such as Online Dispute Resolution (ODR), offer a potential solution to this demand by allowing for speedy resolution of disputes without the need to rely on traditional jurisdictional bodies like judges or the Superintendence of Industry and Commerce in its special judicial power.

In the context of a rapidly globalizing world, the use of ADRs such as ODR, and particularly the amicable composition, has expanded in consumer matters. This is driven by the desire not only to reduce the strain on traditional judicial mechanisms but also to offer effective judicial protection, ensuring that the legal subjects involved in the dispute receive maximum possible satisfaction (Noli et al., 2018; Vieira, 2022).

This brings us to an important turning point where the role of amicable composition in the resolution of consumer disputes is gaining recognition. As a tool of ODR, amicable composition is being increasingly seen as a realistic alternative to traditional methods, offering more harmonious and prompt solutions in consumer disputes.

While the Superintendence of Industry and Commerce could act as a judicial guarantor for interventions made by the amicable composer, an effective system of checks and balances is necessary to ensure fairness. For instance, if a party considers the composer's intervention as biased, grossly abusive, or suggestive of collusion, the Superintendence could intervene, thereby ensuring justice is served. However, such oversight should not undermine the ability of other actors, such as the amicable composers themselves, to partake in dispute resolution.

The current trend towards alternative mechanisms like ODR and amicable composition represents a significant shift in the resolution of consumer disputes. As these practices gain more traction, it will be critical to strike a balance between maintaining the traditional roles of bodies like the Superintendence of Industry and Commerce and facilitating the evolution of alternative dispute resolution mechanisms in consumer affairs.

Discussion

This section discusses the implications of adopting Online Dispute Resolution (ODR) within Colombia's consumer law framework, drawing on the insights gained from the preceding analysis. It evaluates the opportunities and challenges associated with implementing ODR mechanisms, explores comparative lessons from international experiences, and proposes practical considerations for enhancing consumer dispute resolution through the integration of amicable composition and digital technologies. The discussion aims to bridge theoretical perspectives with actionable recommendations to advance access to justice in Colombia.

Balancing Advantages and Risks in ODR Implementation

In the context of Colombia, Online Dispute Resolution (ODR) presents a transformative approach to legal disputes, promising efficiency and broader access to justice. Among its many benefits, ODR offers a streamlined, cost-effective alternative to traditional court settings, fostering a more inclusive legal landscape. However, the digital nature of ODR introduces specific risks, notably in cybersecurity and data protection.

These vulnerabilities can significantly impact the confidentiality of sensitive data, creating a potential for breaches that compromise personal and legal information. To navigate these challenges, implementing robust cybersecurity measures is crucial. This involves the use of advanced encryption, secure data storage, and regular security audits to safeguard information. Additionally, adhering to stringent data protection protocols ensures compliance with legal standards and fosters trust among users (Serna-Patiño & Giraldo-Ramírez, 2019). Balancing these risks with the efficiency and accessibility benefits of ODR is key to its successful implementation.

Despite the inherent risks associated with the digital framework of ODR, its capacity to make dispute resolution more democratic and accessible cannot be overstated. By bringing justice into the digital age, ODR breaks down traditional barriers to legal processes, offering a more inclusive approach. The adoption of stringent cybersecurity and data protection measures is fundamental to mitigating these risks, ensuring that the integrity and confidentiality of user data are maintained. Consequently, the focus on developing robust security protocols and adhering to international best practices in data protection positions ODR as

a forward-looking solution, poised to transform the landscape of dispute resolution in Colombia by prioritizing both innovation and user safety.

Enhancing Consumer Dispute Resolution in Colombia: Insights from Mexico's Concilianet

Mexico's "Concilianet" initiative, an innovative Online Dispute Resolution (ODR) platform managed by the Federal Consumer Protection Agency (PROFECO), provides a digital avenue for resolving consumer disputes. This platform allows for the submission of complaints, negotiation, and resolution entirely online, showcasing the power of technology to streamline and democratize access to justice. The seamless integration of digital tools within "Concilianet" underlines the potential for ODR mechanisms to facilitate effective, efficient, and equitable dispute resolution processes (Nava González & Breceda Pérez, 2015).

The essence of amicable composition in the Colombian context emphasizes the resolution of disputes through cooperative and non-adversarial means. Drawing parallels with "Concilianet," one can see the alignment in objectives between these systems. Both aim to provide accessible, transparent, and impartial platforms that encourage the amicable settlement of disputes. This comparative analysis suggests that adopting a "Concilianet"-like model in Colombia could significantly enhance the country's consumer law framework by incorporating amicable composition principles within a digital ODR platform.

The operational successes of "Concilianet" in Mexico, characterized by its user-friendly interface and the expedited resolution of disputes, offer valuable lessons for Colombia. The platform's ability to handle a diverse range of consumer complaints, from service contracts to warranty issues, coupled with high user satisfaction rates, underscores the viability of digital ODR platforms in improving the dispute resolution landscape (Gómez et al., 2022).

For Colombia, adapting the "Concilianet" model means creating an ODR platform that not only aligns with the national legal framework and consumer protection laws but also embraces the ethos of amicable composition. Such a platform would need to be customizable to address the specific needs of Colombian consumers while ensuring that the principles of fairness, transparency, and accessibility are upheld.

The "Concilianet" platform's success in Mexico serves as a beacon for Colombia's journey toward integrating ODR in consumer law, particularly through

amicable composition. This approach not only aligns with global trends in digital justice but also offers a tailored solution that respects Colombia's unique legal traditions and consumer protection objectives. Adopting a similar model would mark a significant step forward in Colombia's commitment to enhancing access to justice and consumer satisfaction in the digital age.

The experience of Mexico with "Concilianet" provides a valuable comparative perspective for Colombia, illustrating the utility and potential benefits of incorporating ODR platforms within the framework of amicable composition in consumer law. Such initiatives could pave the way for innovative, efficient, and inclusive dispute resolution mechanisms in Colombia, enhancing the overall efficacy of consumer protection.

Expanding the Role of ODR in Strengthening Consumer Trust

In an increasingly digital age, the use of Online Dispute Resolution (ODR) tools to strengthen and streamline the process of amicable composition becomes increasingly pivotal.

ODR encompasses a wide variety of digital tools and processes designed to facilitate the resolution of disputes between parties. Within the consumer rights context, this can include methods such as negotiation, mediation, arbitration, and amicable composition. The application of these methods in a digital context, with the inherent benefits of speed and accessibility, serves to enhance their effectiveness and user-friendliness.

ODR in consumer disputes could be particularly instrumental in bridging geographical gaps and enabling smoother communication between consumers and suppliers, leading to more efficient resolution of conflicts. Given the varied nature of potential consumer complaints, as elaborated in the previously listed thirteen aspects, the accessibility and immediacy offered by ODR provide an advantageous way to handle these disputes.

In addition to facilitating dispute resolution, ODR can foster trust between consumers and suppliers. By providing a transparent, swift, and accessible platform for consumers to voice their grievances, ODR can show consumers that their concerns are taken seriously and addressed promptly. This sense of being heard and valued can significantly contribute to building and maintaining consumer trust (Ebner & Zeleznikow, 2016).

Moreover, the implementation of ODR does not take away the importance of oversight bodies like the Superintendence of Industry and Commerce.

These bodies can play an instrumental role in maintaining the fairness and integrity of the ODR processes, providing essential regulatory oversight to ensure that the rights of both consumers and suppliers are protected.

In a globalized and digitalized society, the integration of ODR within the broader consumer rights framework can mark a progressive step forward. It demonstrates a balance between traditional oversight bodies and innovative online mechanisms while prioritizing the cultivation of consumer trust, a fundamental aspect of the consumer rights domain.

Conclusions

In a globalized and interconnected society powered by advancements in information and communication technologies, Online Dispute Resolution (ODR) emerges as a potent tool for swiftly and effectively resolving legal disputes, particularly within economic and commercial spheres. However, it is essential that the parties involved recognize and agree upon the relevance of these means within their own defined relationships, applied to alternative dispute resolution (ADR) mechanisms.

To facilitate this, it is incumbent upon the State to outline a public policy that ensures access to the necessary resources, a structured process, and defined rules for dispute resolution in economic relations, consumer matters, as well as civil and commercial issues. This policy should establish a minimum regulatory framework for the apt implementation, application, and development of ADR mechanisms.

These considerations extend to all ADR mechanisms, including mediation and amicable composition, which can potentially be managed through ODR, making them suitable tools for deploying information and communication technologies. The application of ADR through new ODR technologies should uphold, at the very least, the principles of expediency, efficiency, and immediacy, along with principles specific to the chosen ADR mechanism, such as neutrality, independence, transparency, and good faith.

Within this context, the Superintendence of Industry and Commerce can function as a judicial guarantor of decisions made via the amicable composition process, intervening in the resolution of disputes whenever those decisions are challenged or disputed by any of the parties involved.

Moreover, a committed public policy inspired by the work carried out by UNCITRAL, complete with a plan and the necessary investments for its implementation,

should outline platforms that inspire trust, guarantee confidentiality, manage documents and different stages of the process, and identify institutional participants to support electronic dispute resolution operations. An appropriate regulatory framework can enable ODR application to all ADR mechanisms both nationally and internationally, fostering the establishment and development of legal and economic relationships.

In this regard, a preliminary view of ODR in Colombia suggests that the amicable composer could use a first-generation system, involving a decision-maker from a list authorized by the Superintendence of Industry and Commerce. Using communication technology and upholding principles of transparency, reliability, economy, and speed, this system can ensure the involvement of all parties for a prompt and fair resolution of consumer disputes.

It should be noted that adapting ADR to technological advancements will ensure broader access to justice, consequently alleviating the strain on the state's judicial apparatus. This applies to both the judicial branch and the jurisdictional function delegated to administrative authorities, such as the Superintendence of Industry and Commerce in matters concerning consumer rights.

Incorporating a balanced view on the implementation of ODR in Colombia, it is clear that despite the challenges and risks associated with digital platforms, such as cybersecurity and data protection, the advantages significantly outweigh the disadvantages. The strategic application of ODR mechanisms, supported by a robust regulatory framework and public policy, promises not only to streamline dispute resolution processes but also to enhance access to justice. This approach underscores a progressive step towards leveraging technology to foster a more efficient and equitable legal system.

Conflict of Interest

The authors declare that there is no conflict of interest.

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